AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-5-86
Vol. 51 No. 43
Pages 7543-7732

federal register

Wednesday
March 5, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; 9 am.
WHERE: Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.
CALL: Dolores O'Guin, St. Louis Federal Information Center, 314-425-4109, for reservations.

WASHINGTON, DC

WHEN: March 20; 9 am and 1 pm. (identical sessions)
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC
CALL: Ruth Reedy, 202-523-5239, for reservations.

DENVER, CO

WHEN: March 24; 9 am.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
CALL: Elizabeth Stout, Denver Federal Information Center, 303-236-7181, for reservations.

DALLAS, TX

WHEN: April 23; 1:30 pm.
WHERE: Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.
CALL: local numbers:

Ft. Worth	817-334-3624
Dallas	214-767-8585
Houston	713-229-2552
Austin	512-472-5494
San Antonio	512-224-4471

for reservations.

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

Correction

In FR Doc. 86–2134 beginning on page 4566 in the issue of Wednesday, February 5, 1986, make the following corrections:

1. On page 4580, in the first column, § ____.103, under the definition for "Handicapped person", in paragraph (l)(ii), in the third line, "bring" should read "brain".

2. On page 4581, in § ____.150(c), in the third column, in the third and fourth lines, "April 7, 1986" should read "June 6, 1986".

BILLING CODE 1500-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 86-401]

Revision of Delegation of Authority; Assistant Secretary for Marketing and Inspection Services et al.

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service (APHIS), the authority to administer the Animal Damage Control Act of March 2, 1931, (7 U.S.C. 426, 426b). The Secretary of Agriculture believes that this program can be conducted most effectively under the jurisdiction of APHIS.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sidney R. Moore, Public Affairs Specialist, Legislative and Public Affairs Staff, Animal and Plant Health Inspection Service, Room 1153 South Agriculture Building, 12th and Independence Avenue, SW., Washington, DC 20250, (202) 447–3981.

SUPPLEMENTARY INFORMATION: The Animal Damage Control program (ADC) was established by the Act of March 2, 1931. The statute authorizes programs for research and operational control of depredating animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur bearing animals and birds and for the protection of stock and other domestic animals through the suppression of animal diseases in predatory and other wild animals. From 1931 until 1939, the ADC was administered by the Department of Agriculture through the then Bureau of Biological Survey. From 1939 to December 19, 1985, the program was administered by the Fish and Wildlife Service, of the Department of the Interior, on the basis that the authority to administer the Act of March 2, 1931, along with the Bureau of Biological Survey, had been transferred to the Department of the Interior by

Reorganization Plan No. II of 1939. Congress transferred the responsibility for administration of ADC to the Department of Agriculture, in the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986, as enacted on December 19, 1985, by Section 101 of the Continuing Appropriations for fiscal year 1986, Pub. L. No. 99-190. The Secretary of Agriculture believes that this program can be conducted most effectively under the jurisdiction of APHIS. This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator, APHIS, the responsibility and the authority for administering the Animal Damage Control Act of 1931 (7 U.S.C. 426, 426b). This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 11291. Finally, this subject is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 continues to read.

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953 unless as otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b)(38) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(38) The Act of March 2, 1931, (7 U.S.C. 426, 426b).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding a new paragraph (a)(41) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(41) The Act of March 2, 1931 (7 U.S.C. 426, 426b).

Dated: February 26, 1986.

For Subpart C:

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

Dated: February 26, 1986.

For Subpart F:

Raymond D. Lett,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86-4655 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 86-303]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations in 7 CFR Part 354 which prescribe commuted traveltime allowances. The regulations are amended by adding or changing commuted traveltime periods for traveling from certain duty stations in Arizona, Florida, Ohio, and Texas to specified locations in these States where services are to be performed. This document also amends the regulations by deleting commuted traveltime periods for traveling from certain duty stations in Illinois, Ohio, and Texas to specified locations in these States.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Eggert, Director, National Administrative Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 354, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), set forth provisions for obtaining, on a reimbursable basis, inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal products, or other commodities, during Sundays, holidays, or at other times outside the regular tour of duty of Plant Protection and Quarantine (PPQ) employees who perform such services. These services are provided upon request to any person, firm, or corporation having ownership, custody, or control of the animals or commodities requiring such services.

The regulations provide that under certain circumstances the charges for reimbursable services of a PPQ employee shall include charges for a commuted traveltime period. Section 354.2 of the regulations contains administrative instructions prescribing commuted traveltime periods. Traveltime periods reflect, as nearly as is practicable, the time required for a PPQ employee to travel from the employee's duty station to the locality where the service is provided and to return to the employee's duty station.

This document amends § 354.2 of the regulations by adding or changing commuted traveltime periods for traveling from certain duty stations in Arizona, Florida, Ohio, and Texas to other locations in these States where services are to be performed (the amendments are set forth in the rule portion of this document). This action is necessary to inform the public that PPQ employees are available to travel from such duty stations to perform services at specified locations and to inform the public of the commuted traveltime periods for such travel.

This document also amends § 354.2 of the regulations by deleting commuted traveltime periods for traveling from certain duty stations in Illinois, Ohio, and Texas to specified locations in these States (the amendments are set forth in the rule portion of this document). This action is necessary because PPQ employees are no longer available to travel from the specified duty stations to perform such services.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major

rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The amount of articles and commodities requiring inspection and other services of a PPQ employee on a Sunday, holiday, or overtime basis at the affected locations represent an insignificant portion of the total amount of articles and commodities that require such services at locations in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this rule are impracticable and contrary to the public interest; and good cause is found for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Under the circumstances described above, 7 CFR Part 354 is amended as follows:

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in alphabetical order or removing the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Delete:			
* * * * *			
Florida:			
Ft. Lauderdale		1	
Port Everglades.		1	
* * * * *			
Illinois:			
Peoria	Princeton		3
* * * * *			
Ohio:			
Columbus	Marysville		2
Columbus	Sidney		5
Columbus	Washington Court House.		3
Dayton	Marysville		3
Dayton	Sidney		2
Dayton	Washington Court House.		3
* * * * *			
Texas:			
Barbour's Cut	Houston		3
Bayport	Houston		3
Baytown	Houston		2
Dallas/Ft. Worth Regional Airport.	Denton		2
Dallas/Ft. Worth Regional Airport.	Waxahachie		3
Houston (except Houston Intercontinental Airport).		2	
Houston Intercontinental Airport.			3
Kelly AFB	Boerne		3
Love Field	Waxahachie		2
Love Field	Denton		2
Orange	Lake Charles		2
Port Arthur	Lake Charles and Baton Rouge.		3

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
* * * * *			
Add:			
Arizona:			
Fort Huachuca Army Base, Sierra Vista.	Douglas or Nogales.		3
Fort Huachuca Army Base, Sierra Vista.	Tucson		4
* * * * *			
Florida:			
Ft. Lauderdale		2	
Port Everglades.		2	
* * * * *			
Ohio:			
Cincinnati	Columbus		6
Cincinnati	Dayton		3
Columbus		2	
Columbus	Dayton		4
Dayton		2	
Dayton	Columbus		4
* * * * *			
Texas:			
Barbour's Cut	Houston	2	
Bayport	Houston	2	
Baytown	Houston	2	
Houston (including Houston Intercontinental Airport).		2	
* * * * *			

Done at Washington, DC, this 28th day of February, 1986.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 4728 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448

[Doc. No. 0074A]

Various Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on December 26, 1985 (50 FR 52757). The interim rule amended the Forage Seeding, Pea, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomato, Popcorn, and ELS Cotton Crop

Insurance Regulations (7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447 and 448), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 26, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 52757, amending the Forage Seeding, Pea, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomato, Popcorn, and ELS Cotton Crop Insurance Regulations (7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448), effective for the 1985 calendar year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448

Crop Insurance, Forage seeding, Pea, Wheat, Barley, Grain sorghum, Cotton, Flax, Rice, Peanut, Combined crop, Oat, Sunflower, Soybean, Corn, Dry bean, Tobacco (quota plan), Canning and freezing sweet corn, Canning and processing tomato, Popcorn, and ELS cotton.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on December 26, 1985, at 50 FR 52757, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 25, 1986.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4720 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 416

[Amdt. No. 1; Doc. No. 0069A]

Pea Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, the interim rule published in the **Federal Register** on December 6, 1985 (50 FR 49920). The interim rule amended the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years, by deleting the payment of indemnity for any peas which are lost because they were not harvested even though they were available for harvest. The intended effect of this action is to confirm the interim rule published on Friday, December 6, 1985, at 50 FR 49920, to clarify that FCIC will not insure against loss of production when green peas are not timely harvested by the processor because of unusual weather conditions resulting in a substantial amount of peas being ready for harvest at the same time. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, December 6, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 49920, amending the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years, to delete the payment of indemnity for any peas which are lost because they were not harvested even though they were available for harvest.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be publish in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 416

Crop insurance, Peas.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Friday, December 6, 1985, at 50 FR 49920, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516.)

Done in Washington, DC, on February 11, 1986.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-4721 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 627, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 627 increases the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 21–27, 1986. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 627, Amendment 1 (§ 907.927) is effective for the period February 21–27, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/475–3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that his action will tend to effectuate the declared policy of the act.

The amendment is consistent with the marketing policy for 1985–86. The committee met publicly on February 25, 1986, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared policy of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for Part 7 CFR 907 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 907.927 (51 FR 6217) is revised to read as follows:

§ 907.927 Navel Orange Regulation 627.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 21, 1986, through February 27, 1986, are established as follows:

(a) District 1: 1,550,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 27, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-4824 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 959

Onions Grown in South Texas; Amdt. No. 4 to Handling Regulation

AGENCY: Agricultural Market Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes the continuing handling regulation § 959.322 by allowing unlimited experimental shipments of onions in 50, 40, 25, and 20 pound cartons, rather than the current level of shipments, which is 10 percent. In addition, it relieves gift package handling requirements by making a change which clarifies the assessment provision and by not requiring repeat inspections of gift packages. The amendment promotes orderly marketing of such onions by removing unnecessary requirements and providing improved marketing information.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Acting Chief Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, (202) 475–3919.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 40 handlers of onions will be subject to regulation under the South Texas Onion Marketing Order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden imposed on small entities by this amendment, if present at all, is not significant.

This final rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended, regulating the handling of onions grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Onion Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in October 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

On November 7, 1985, the committee recommended deleting the 10 percent limitation on experimental shipments and allowing unlimited experimental shipments of onions in 50, 40, 25, and 20 pound cartons under paragraph (f)(4), Experimental shipments. The committee believes that there are presently too many unknowns regarding carton size(s) and construction type(s), and therefore considers it premature to recommend specific cartons to be included in § 959.322(c). Permitting unlimited experimental shipments of onions in 50, 40, 25, and 20 pound containers will allow the committee to collect sufficient data from which it can determine the most beneficial carton sizes that would also be practicable to the trade.

To ensure that the handling of onions in such experimental containers remains under proper supervision, the South Texas Onion Committee must be notified of carton size and furnished a container manifest; and shippers must furnish the committee with outturn reports of such shipments.

In addition, on February 20, 1986, the committee unanimously recommended that gift packs be released from inspection and assessment requirements when such gift packs have been previously handled by a first handler. There is some confusion whether the language of § 959.322(f)(3) requires a second assessment on gift packages. The order specifies in § 959.42(a) that the handler who first handles regulated onions shall pay assessments. This final rule will eliminate the confusion by amending § 959.322(f)(3) in such manner as to make it clear to all concerned that an onion gift pack is not subject to assessment when such onions have been previously handled and subject to assessment. Assessments are collected when onions are inspected and when inspection certificates are granted. Therefore, this rule also eliminates the need for a second inspection if the onions have already been handled and inspected. The committee believes duplicate inspection and assessment to be contrary to its market development goals.

Notice of the proposed amendment of the handling regulation regarding experimental shipments was published in the **Federal Register** (51 FR 760) on January 8, 1986. It provided that interested persons could file comments on the proposal through February 7, 1986. No comments were received. With respect to the amendment concerning the gift pack requirements, such amendment is a clarification and a relaxation of certain requirements. After considering the recommendations submitted earlier by the committee and other available information, the Department has decided that the proposed amendment should be made effective and that the final rule should be issued.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the requirements specified in this rule at an open meeting at which the committee recommended issuance of such requirements to become effective as soon as possible. South Texas onion handlers have been apprised of the final rule's provisions. The shipment of these onions is expected to begin immediately, and therefore it is important that these changes become effective as soon as possible. The provisions in the final rule are the same as those in a proposed rule which was published in the **Federal Register**, and which provided a 30 day comment period, except for a relaxation of requirements applicable to certain gift packs. It is found that this final rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.322 (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983; 48 FR 25169, June 6, 1983; and 49 FR 4931, February 9, 1984) is hereby further amended by revising (f)(3) and (f)(4)(i) as follows:

§ 959.322 Handling regulation.

* * * * *

(f) *Special purpose shipment.* * * *

(3) *Gift packages.* The handling to any person of gift packages of onions, not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (c) of this section, but shall conform to all assessment requirements of § 959.42 and inspection requirements of paragraph (d) of this section, if such onions were not previously handled by a first handler. All such onions shall meet the grade and size requirements of paragraphs (a) and (b) of this section.

(4) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in

thickness. Also, onions may be shipped in 50, 40, 25, and 20-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports on such shipments.

* * * * *

Dated: February 28, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-4727 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-018]

Specifically Approved States Authorized To Receive Mares Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations by adding Maryland and Ohio to the list of approved States authorized to receive certain mares imported into the United States from countries affected with contagious equine metritis (CEM). This action is taken because the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, has determined that Maryland and Ohio have laws or regulations in effect to require the additional inspection, treatment, and testing of such horses to further ensure their freedom from CEM as required by the regulations. The amendment is necessary in order to avoid the imposition of unnecessary restrictions on importers of mares from countries affected with CEM.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

Section 92.2(i) of the regulations in 9 CFR Part 92, among other things, authorizes the importation of certain mares and stallions over 731 days of age into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met, and the animals imported are moved into approved States for further inspection, treatment, and testing.

A document published in the **Federal Register** on December 2, 1985 (50 FR 49344-49345), set forth an interim rule amending § 92.4 of the regulations by adding Maryland and Ohio to the list of approved States authorized to receive such mares. The addition of Maryland and Ohio to the list was based on the finding that they meet certain minimum standards concerning treatment, testing, and handling procedures for these mares.

The interim rule was made effective upon publication. Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of December 2, 1985, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that fewer than 26 mares from countries affected with CEM will be imported into the States of Maryland and Ohio annually. This compares with approximately 3,340 stallions and mares (most of these were mares) imported into the United States from countries affected with CEM during Fiscal Year 1984 and with approximately 36,000 horses of all classes imported into the United States during that same period.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Liverstock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 which was published at 50 FR 49344-49345 on December 2, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 27th day of February 1986.

G. J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-4819 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Appliance Standards

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Final rules; Removal.

SUMMARY: Today's notice removes the U.S. Department of Energy rules regarding energy efficiency standards for kitchen ranges and ovens, clothes

dryers, furnaces, central air conditioners, refrigerators and refrigerator-freezers, freezers, water heaters and room air conditioners and removes rules granting petitions from five States requesting, in each case, that the State energy efficiency standard for clothes dryers and/or kitchen ranges and ovens be exempted from preemption by the Federal standards rules for these two products.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station CE-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163, 87 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, 92 Stat. 3266), which requires DOE to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325 (a)(1) and (c). The Act provides, however, that no standard is to be established if there is no test procedure for the product or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy would be a rule that supersedes any State standard. Section 325(b). A State whose energy efficiency standard would be superseded, however, may petition the Department for a rule that it not be superseded. Section 327(b)(3).

On December 15, 1982, DOE issued a final rule with respect to two covered products, clothes dryers, and kitchen ranges and ovens. 47 FR 57198 (December 22, 1982). (Hereafter referred to as the December 1982 rule.) With respect to both products, DOE determined that a standard would not result in significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE by States to obtain exemption from preemption of State of local energy efficiency standards. On August 25, 1983, DOE issued a final rule with respect to six further covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376 (August 30, 1983). (Hereafter referred to as the August 1983 rule.) For each of the six products covered by the August 1983 rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

On March 15, 1984, DOE issued final rules granting petitions from the States of California, New York, Wisconsin, Minnesota and Oregon, requesting, in each case, that the State energy efficiency standard for clothes dryers and/or kitchen ranges and ovens be exempted from Federal preemption. 49 FR 11764 (March 27, 1984).

The December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department of Energy. The Court of Appeals granted NRDC's petition and set aside DOE's December 1982 and August 1983 final rules. *NRDC v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985). That decision having now become final, the Department is removing these rules from the Code of Federal Regulations. Similarly, the Department is removing final rules granting five States exemption from two of the rules which have been set aside.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC February 12, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291-6309).

2. Section 430.32 is removed and reserved.

§ 430.32 Final energy efficiency standards. [Reserved]

3. Section 430.33 is removed and reserved.

§ 430.33 Preemption of State regulations. [Reserved]

[FR Doc. 86-4808 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

[Rev. 2, Amdt. 6]

Standards of Conduct; Conflict of Interest

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The internal organization of the Agency, Office of General Counsel has been altered by a reorganization. As part of this reorganization, the responsibilities of the Agency Standards of Conduct Counselor and the Agency Ethics Officer were transferred from the Associate General Counsel for Financial Law to the Deputy General Counsel. The purpose of this amendment is to reflect this transfer of duties in the Agency's regulations.

EFFECTIVE DATE: March 9, 1986.

FOR FURTHER INFORMATION CONTACT:

Michael F. Kinkead, Attorney, Small Business Administration, Room 722, 1441 L Street NW., Washington, DC 20416, (202) 653-6381.

SUPPLEMENTARY INFORMATION: SBA is publishing this rule change in final form since it relates only to Agency management and is, therefore, exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Orders 12291.

List of Subjects in 13 CFR Part 105

Conflict of interests.

PART 105—[AMENDED]

Accordingly, SBA amends Part 105 of 13 CFR to read as follows:

1. The authority citation for Part 105 continues to read as follows:

Authority: Sec. 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 634(b)(6)).

2. Sections 105.802(a) and 105.803(a) are revised as follows:

§ 105.802 Standards of Conduct Counselors.

(a) The SBA Standards of Conduct Counselor shall be the Deputy General Counsel. He shall be assisted by a Regional Standards of Conduct Counselor for each SBA Region. The Regional Counsel shall be the Regional Standards of Conduct Counselor for each Region.

* * * * *

§ 105.803 Designated Agency Ethics Official.

(a) The Designated Agency Ethics Officials, appointed by the Administrator pursuant to the Ethics in Government Act of 1978, shall be the Deputy General Counsel. He may, in turn, appoint an Alternate Designated Agency Ethics Official, who will be an attorney in the Office of Finance and Legislation. The Alternate Official will assist the designated Agency Ethics Official and shall act for him in his absence, in the performance of his official functions.

Dated: February 12, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-4410 Filed 3-4-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0534]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of zinc sulfide for use in contact with food. This action responds to a petition filed by Springborn Laboratories, Inc., on behalf of Ore and Chemical Corp.

DATES: Effective March 5, 1986; objections by April 7, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 9, 1985 (50 FR 50234), FDA announced that a petition (FAP 4B3811) had been filed by Ore and Chemical Corp., 520 Madison Ave., New York, NY 10022, proposing that the food additive regulations be amended to provide for the safe use of zinc sulfide as a colorant for polymers and as a component of a lubricant with incidental food contact for food-processing machinery.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided is 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential enviromental effects of this action has concluded that the actions will not have significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action to approve the use of zinc sulfide as a colorant in polymers would require an environmental assessment under 21 CFR 25.31a(a) and an action to approve the use of zinc sulfide in lubricants with incidental food contact would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3297 is amended in paragraph (e) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3297. Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * *	
Zinc sulfide	For use at levels not to exceed 10 percent by weight.

3. Section 178.3570 is amended in paragraph (a)(3) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * * * *	
Zinc sulfide	For use at levels not to exceed 10 percent by weight of the lubricant.

* * * * *

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4697 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 43 and 276

[DoD Directive 1344.7]

Personal Commercial Solicitation on DoD Installations

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part provides in a single document Department of Defense policies governing the conduct of personal commercial solicitation and insurance sales on DoD installations and updates procedures for dealers and their agents seeking to transact personal commercial business on DoD installations. In addition to minor editorial changes made in this final document, we have defined the term "DoD installation".

EFFECTIVE DATE: February 13, 1986.

ADDRESS: Assistant Secretary of Defense (Force Management and Personnel), ODASD(MM&PP), PA&S, Room 3C975, Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Schoenberger, (202) 697-9525.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 43

Consumer protection, Military personnel, Federal buildings and facilities.

PART 276—[REMOVED]

Title 32 CFR Part 276 (Solicitation and Sale of Insurance on Department of Defense Installations) is removed in its entirety.

Title 32 CFR Part 43 is revised to read as follows:

PART 43—PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS

Sec.

Authority: 5 U.S.C. 301.

§ 43.1 Reissuance and purpose.

This part:

(a) Consolidates into a single document 32 CFR Part 43 and 32 CFR Part 276 and update DoD policies and procedures governing personal commercial solicitation and insurance sales on DoD installations.

(b) Continues the established annual DoD accreditation requirements for life insurance companies operating in overseas areas where neither Federal nor state consumer protection regulations apply.

§ 43.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD),the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), and the Unified Commends (herafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) The provisions of this part do not apply to services furnished by commercial companies, such as deliveries of milk, laundry, and related residence services when such services are authorized by the DoD installation commander.

(c) Nothing in this part should be construed to preclude private, non-profit, tax-exempt organizations composed of active and retired members of the Military Services from holding membership meetings which do not involve commercial solicitation on DoD installations. Attendance at these meetings shall be voluntary and the time and place of such meetings are subject to the discretion of the installation commander or his or her designee.

§ 43.3 Definitions.

Agent. An individual who receives remuneration as a salesperson or whose remuneration is dependent on volume of sales of a product or products.

Association. Any organization, whether or not the word "Association" appears in its title, composed of and serving exclusively members of the Military Services on active duty, in a Reserve status, in a retired status, and their dependents, which officers its members life insurance coverage, either as part of the membership dues, or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

DoD Installation. Any Federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which DoD personnel are assigned for duty, including barracks, transient housing, and family quarters.

DoD Personnel. All active duty officers (commissioned and warrant) and enlisted members of the Military Services and all civilian employees, including nonappropriated fund employees and special Government employees of all offices, agencies, and departments carrying on functions on a Defense installation.

General Agent. A person who has a legal contract to represent a company solely and exclusively.

Insurance Carrier. An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

Insurance Product. A policy, annuity, or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

Insurer. Any company or association engaged in the business of selling insurance policies to DoD personnel.

Normal Home Enterprises. Sales or services which are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

Securities. Mutual funds, stocks, bonds, or any product registered with the Securities and Exchange Commission except for any insurance or annuity product issued by a corporation subject to supervision by state insurance authorities.

Solicitation. The conduct of any private business, including the offering

and sale of insurance on a military installation. Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility vested in the DoD installation commander.

§ 43.4 Policy.

It is the policy of the Department of Defense to safeguard and promote the welfare of DoD personnel as consumers by setting forth a uniform approach to the conduct of all personal commercial solicitation and sales to them by dealers and their agents.

§ 43.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall be responsible for developing policies and procedures governing personal commercial solicitation activities conducted on DoD installations.

(b) The *Heads of DoD Components*, or their designees, shall assure implementation of this Directive and compliance with its provisions.

§ 43.6 Procedures.

(a) *General.*

(1) No person has authority to enter upon a DoD installation and transact personal commercial solicitation as a matter of rights. Personal commercial solicitation will be permitted only if the following requirements are met:

(i) The solicitor is duly licensed under applicable Federal, state, or municipal laws and has complied with installation regulations in accordance with paragraph (c) of this section.

(ii) Personal commercial solicitation is permitted by the local installation commander.

(iii) A specific appointment has been made with the individual concerned and conducted in family quarters or in other areas designated by the installation commander.

(2) Those seeking to transact personal commercial solicitation on overseas installations shall be required to observe, in addition to the above, the applicable laws of the host country and, upon demand, present documentary evidence to the installation commander, or designee, that the company they represent, and its agents, meet the licensing requirements of the host country.

(3) Organizations involved in sales are permitted to display literature on DoD installations in locations selected by the commander.

(b) *Life Insurance Products and Securities.* (1) Life insurance products and securities offered and sold to DoD personnel must meet the prerequisites described in Appendix A.

(2) Insurers and their agents are authorized to solicit on DoD installations provided they are licensed under the insurance laws of the state in which the installation is located. In overseas areas, DoD Components shall limit this authorization to those insurers accredited under the provisions of Appendix B.

(3) The conduct of all insurance business on DoD installations shall be by specific appointment. When establishing the appointment, insurance agents must identify themselves to the prospective purchaser as an agent for a specific company.

(4) Installation commanders shall designate areas where interviews by appointment may be conducted. Invitations to conduct interviews shall be extended to all agents on an equitable basis. Where space and other considerations limit the number of agents using the interviewing area, the installation commander may develop and publish local policy consistent with this concept.

(5) Installation commanders shall make disinterested third-party counseling available to DoD personnel desiring counseling.

(6) In addition to the solicitation prohibitions contained in paragraph (d) of this section, DoD Components shall prohibit:

(i) DoD personnel from representing any insurer, or dealing directly or indirectly with any insurer or any recognized representative of any insurer on the installation, as an agent or in any official or business capacity with or without compensation.

(ii) The use of an agent as a participant in any Military Services-sponsored insurance education or orientation program.

(iii) The designation of any agent or the use by any agent of titles such as "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," etc.

(iv) The assignment of desk space for interviews for other than a specific prearranged appointment. During such appointment, the agent shall not be permitted to display desk or other signs announcing his or her name or company affiliation.

(v) The use of the "Daily Bulletin" or any other notice, official or unofficial, announcing the presence of an agent and his or her availability.

(c) *Supervision of On-Base Commercial Activities.* (1) All pertinent installation regulations shall be posted in a place easily accessible to those conducting personal commercial solicitation activities on the installation.

(2) When practicable, as determined by the installation commander, a copy of the applicable installation regulations shall be given to those conducting on-base commercial activities with the warning that any infractions of the regulations will result in the withdrawal of solicitation privileges.

(d) *Prohibited Practices.* The following commercial solicitation practices shall be prohibited on all DoD installations:

(1) Solicitation of recruits, trainees, and transient personnel in a "mass" or "captive" audience.

(2) Making appointments with or soliciting military personnel who are in an "on-duty" status.

(3) Soliciting without appointment in areas utilized for the housing or processing of transient personnel, in barracks areas used as quarters, in unit areas, in family quarters areas, and in areas provided by installation commanders for interviews by appointment.

(4) Use of official identification cards by retired or reserve members of the Military Services to gain access to DoD installations for the purpose of soliciting.

(5) Procuring, or attempting to procure, or supplying roster listings of DoD personnel for purposes of commercial solicitation, except for releases granted in accordance with DoD Directive 5400.7.

(6) Offering unfair, improper, and deceptive inducements to purchase or trade.

(7) Using rebates to facilitate transactions or to eliminate competition.

(8) Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature.

(9) Using oral or written representations to suggest or give the appearance that the Department of Defense sponsors or endorses any particular company, its agents, or the goods, services, and commodities it sells.

(10) Full-time DoD personnel making personal commercial solicitations or sales to DoD personnel who are junior in rank or grade as provided in DoD Directive 5500.7 [1].

(11) Entering into any unauthorized or restricted area.

(12) Using any portion of installation facilities, including quarters, as a

[1] Copies may be obtained, if needed, from the US Naval Publications and Forms Center 5801 Tabor Avenue, ATTN: Code 301, Philadelphia PA 19120.

showroom or store for the sale of goods or services, except as specifically authorized by DoD Directives 1330.9 [2] and 1330.17 [3] and DoD Instructions 1330.18 [4] and 1000.15 [5]. This is not intended to preclude normal home enterprises, providing applicable state and local laws are complied with.

(13) Soliciting door to door.

(14) Advertising addresses or telephone numbers of commercial sales activities conducted on the installation.

(e) *Denial and Revocation of On-Base Solicitation.* (1) The installation commander shall deny or revoke permission to a company and its agents to conduct commercial activities on the base if such action is in the best interests of the command. The grounds for taking this action shall include, but not be limited to, the following:

(i) Failure to meet the licensing and other regulatory requirements prescribed in paragraphs (a) and (b) of this section.

(ii) Commission of any of the practices prohibited in paragraphs (b)(6) and (d) of this section.

(iii) Substantiated complaints or adverse reports regarding quality of goods, services, and commodities and the manner in which they are offered for sale.

(iv) Knowing and willful violations of Pub. L. 90–321.

(v) Personal misconduct by a company's agent or representative while on the installation.

(vi) The possession of or any attempt to obtain supplies of allotment forms used by the Military Departments, or possession or use of facsimiles thereof.

(vii) Failure to incorporate and abide by the Standards of Fairness policies contained in DoD Directive 1344.9.[6]

(2) In withdrawing solicitation privileges, the commander shall determine whether to limit it to the agent alone or extend it to the company the agent represents. This decision shall be communicated to the agent and to the company the agent represents and shall be based on the circumstances of the particular case, including, among others, the nature of the violations, frequency of violations, the extent to which other agents of the company have engaged in such practices, and any other matters tending to show the company's culpability.

(i) Upon withdrawing solicitation privileges, the commander shall promptly inform the agent and the company the agent represents orally or in writing.

(ii) If the grounds for the action involve the eligibility of the agent or company to hold a state license or to meet other regulatory requirements, the appropriate authorities will be notified.

(iii) The commander shall afford the individual or company an opportunity to show cause why the action should not be taken. To "show cause" means an opportunity must be given for the grieved party to present facts on his or her behalf on an informal basis for the consideration of the installation commander.

(iv) If warranted, the commander shall recommend to the Military Department concerned that the action taken be extended to other DoD installations. If so approved, and when appropriate, the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), following consultation with the Military Department concerned, shall order the action extended to other Military Departments.

(v) All denials or withdrawals of privileges will be for a set period of time, at the end of which the individual may reapply for permission to solicit through the Military Department originally imposing the restriction. Denial or withdrawal of soliciting privileges may or may not be continued, as warranted.

(vi) When such denials or withdrawals are lifted, the Office of the ASD(FM&P) shall be notified for parallel action if the same denial or withdrawal has been extended to other Military Departments.

(vii) The commanding officer may, if circumstances dictate, make immediate suspensions of solicitation privileges for a period of 30 days while an investigation is conducted. Exceptions to this amount of time must be approved by the Military Department concerned.

(3) Upon receipt of the information outlined above, the Secretaries of the Military Departments may direct the Armed Forces Disciplinary Control Boards in all geographical areas in which the grounds for action have occurred to consider the charges and take appropriate action.

(f) *Advertising Policies.* (1) The Department of Defense expects voluntary observance of the highest business ethics both by commercial enterprises soliciting DoD personnel through advertisements in unofficial military publications, and by the publishers of those publications in describing goods, services, and commodities, and the terms of the sale (including guarantees, warranties, and the like).

(2) The advertising of credit terms shall conform to the provisions of Pub. L. 90–321 as implemented by Regulation Z.

(g) *Educational Programs.* (1) The Military Departments shall develop and disseminate information and education programs for members of the Military Services on how to conduct their personal commercial affairs, including such subjects as the Truth-in-Lending Act, insurance, Government benefits, savings, and budgeting. The services of representatives of credit unions, banks, and those nonprofit military associations (provided such associations are not underwritten by a commercial insurance company) approved by the Military Departments may be used for this purpose. Under no circumstances shall commercial agents, including representatives of loan, finance, insurance or investment companies, be used for this purpose. Educational materials prepared or presented by outside organizations expert in this field may, with appropriate disclaimers and permission, be adapted or used if approved by the Military Department concerned. Presentations by approved organizations shall only be conducted at the express request of the installation commander.

(2) The Military Departments shall also make qualified personnel and facilities available for individual counseling on loans and consumer credit transactions in order to encourage thrift and financial responsibility and promote a better understanding of the wise use of credit, as prescribed in DoD Directive 1344.9.[7]

(3) Military members shall be encouraged to seek advice from a legal assistance officer or their own lawyer before making a substantial loan or credit commitment.

(4) Each Military Department shall provide advice and guidance to military personnel who have a complaint under Pub. L. 90–321 or who allege a criminal violation of its provisions, including referral to the appropriate regulatory agency for processing of the complaint.

Appendix A—Life Insurance Products and Securities

A. Life Insurance Product Content Prerequisites

1. Insurance products, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold worldwide to personnel on DoD installations, must:

[2] See footnote 1 to § 43.6(d)(10).
[3] See footnote 1 to § 43.6(d)(10).
[4] See footnote 1 to § 43.6(d)(10).
[5] See footnote 1 to § 43.6(d)(10).
[6] See footnote 1 to § 43.6(d)(10).
[7] See footnote 1 to § 43.6(d)(10).

a. Comply with the insurance laws of the state or country in which the installation is located and the procedural requirements of this Directive.

b. Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract.

c. Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

d. Contain no variation in the amount of death benefit or premium based upon the length of time the contract has been in force, unless all such variations are clearly described therein.

2. To comply with paragraphs A.1.b., c., and d., above, an appropriate reference stamped on the face of the contract shall draw the attention of the policyholder to any extra premium charges and any variations in the amount of death benefit or premium based upon the length of time the contract has been in force.

3. Variable life insurance products may be offered provided they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

4. Premiums shall reflect only the actual premiums payable for the life insurance product.

B. Sale of Securities

1. All securities must be registered with the Securities and Exchange Commission.

2. All sales of securities must comply with existing and appropriate Securities and Exchange Commission regulations.

3. All securities representatives must apply directly to the commander of the installation on which they desire to solicit the sale of securities.

4. Where the accredited insurer's policy permits, an overseas accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities Dealers or as an associate of a broker or dealer registered with the Securities and Exchange Commission—may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

C. Use of the Allotment of Pay System

1. Allotments of military pay for life insurance products shall be made in accordance with DoD Directive 7330.1.[8]

2. For personnel in pay grades E–1, E–2, and E–3, at least seven days shall elapse for counseling between the signing of a life insurance application and the certification of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station.

D. Association—General

The recent growth and general acceptability of quasimilitary associations offering various insurance plans to military personnel are acknowledged. Some associations are not organized within the supervision of insurance laws of either a state or the Federal Government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service regulations. Regardless of the manner in which insurance plans are offered to members, the management of the association is responsible for complying fully with the instructions contained herein and the spirit of this part.

Appendix B—The Overseas Life Insurance Accreditation Program

A. Accreditation Criteria

1. *Initial Accreditation.*

a. Insurers must demonstrate continuous successful operation in the life insurance business for a period of not less than five years on December 31 of the year preceding the date of filing the application.

b. Insurers must be listed in Best's Life-Health Insurance Reports and be assigned a rating of B+ (Very Good) or better for the business year preceding the Government's fiscal year for which accreditation is sought.

2. *Reaccreditation.*

a. Insurers must demonstrate continuous successful operation in the life insurance business, as described in subsection A.1.a., above.

b. Insurers must retain a Best's rating of B+ or better, as described in paragraph A.1.b., above.

c. Insurers must establish an agency sales force in one of the overseas commands within two years of initial accreditation.

3. *Waiver Provisions.*

Waivers of the initial accreditation and reaccreditation provisions will be considered for those insurers demonstrating substantial compliance with the aforementioned criteria.

B. Application Instructions

1. *Applications Filed Annually.* During the months of May and June of each year insurers may apply for solicitation privileges for personnel assigned to U.S. military installations in foreign areas for the fiscal year beginning the following October 1.

2. *Application Prerequisites.* A letter of application, signed by the president, vice president, or designated official of the insurance company shall be forwarded to the Assistant Secretary of Defense (Force Management and Personnel), Attention: Personnel Administration and Services Directorate, ODASD(MM&PP), The Pentagon, Washington, DC 20301–4000. The letter shall contain the information set forth below, submitted in the order listed. Where not applicable, so state.

a. The overseas commands (e.g., European, Pacific, Atlantic , Southern) where the company is presently soliciting, or planning to solicit on U.S. military installations.

b. A statement that the company has complied with, or will comply with, the applicable laws of the country or countries wherein it proposes to solicit. "Laws of the country" means all natural, provincial, city, or county laws or ordinances of any country, as applicable.

c. A statement that the products to be offered for sale conform to the standards prescribed in Appendix A and contain only the standard provisions such as those prescribed by the laws of the state where the company's headquarters are located.

d. A statement that the company shall assume full responsibility for the acts of its agents with respect to solicitation. Sales personnel will be limited in numbers to one general agent and no more than 50 sales personnel for each overseas area. If warranted, the number of agents may be further limited by the overseas command concerned.

e. A statement that the company will not utilize agents who have not been accredited by the appropriate overseas command to sell to DoD personnel on or off its DoD installations.

f. Any explanatory or supplemental comments that will assist in evaluating the application.

g. If the Department of Defense requires facts or statistics beyond those normally involved in accreditation, the company shall make separate arrangements to provide them.

h. A statement that the company's general agent and other accredited agents are appointed in accordance with the prerequisites established in section C., below.

3. If a company is a life insurance company subsidiary, it must be accredited separately on its own merits.

C. Agent Requirements

Unified commanders shall apply the following principles:

1. An agent must possess a current state license. The overseas commander may waive this requirement for an accredited agent continuously residing and successfully selling life insurance in foreign areas, who, through no fault of his or her own, due to state law (or regulation) governing domicile requirements, or requiring that the agent's company be licensed to do business in that state, forfeits eligibility for a state license. The request for a waiver shall contain the name of the state or jurisdiction which would not renew the agent's license.

2. General agents and agents shall represent only one accredited commercial insurance company. This requirement may be waived by the overseas commander if multiple representation can be proven to be in the best interest of DoD personnel.

3. An agent must have at least one year of successful life insurance underwriting in the United States or its territories, generally within the five years preceding the date of application, in order to be designated as accredited and employed for overseas solicitation.

4. Appropriate overseas commanders shall exercise further agent control procedures as deemed necessary.

5. An agent, once accredited in an overseas area, may not change affiliation from the staff of one general agent to another and retain accreditation, unless the previous employer certifies in writing that the release is without justifiable prejudice. Unified commanders will have final authority to determine justifiable prejudice. Indebtedness of an agent to a previous employer is an example of justifiable prejudice.

[8] See footnote 1 to § 43.6(d)(10).

D. Announcement of Findings

1. Accreditation by the Department of defense upon annual applications of insurers shall be announced as soon as practicable by a notice to each applicant and by a listing released annually in September to the appropriate overseas commander. This approval does not constitute DoD endorsement of the insurer. Any advertising by insurers which suggests such endorsement is prohibited.

2. In the event accreditation is denied, specific reasons for such findings shall be submitted to the applicant.

a. Upon receipt of notification of an unfavorable finding, the insurer shall have 30 days from the receipt of such notification (forwarded certified mail, return recipt requested) in which to request reconsideration of the original decision. This request must be accompanied by substantiating data or information in rebuttal of the specific reasons upon which the adverse findings are based.

b. Action by the Assistant Secretary of Defense (Force Management and Personnel) on appeal is final.

c. If the applicant is presently accredited as an insurer, up to 90 days from final action on an unfavorable finding shall be granted in which to close out operations.

3. Upon receiving the annual letter of accreditation, each company shall send to the applicable unified commander a verified list of agents currently accredited for overseas solicitation. Where applicable, the company shall also include the names of new agents for whom original accreditation and permission to solicit on base is requested. Insurers initially accredited will be furnished instructions by the Department of Defense for agent accreditation procedures in overseas areas.

4. Material changes affecting the corporate status and financial conditions of the company which may occur during the fiscal year of accreditation must be reported as they occur.

a. The Department of Defense reserves the right to terminate accreditation if such material changes appear to substantially affect the financial and operational criteria described in section A., above, on which accreditation was based.

b. Failure to report such material changes can result in termination of accreditation regardless of how it affects the criteria.

5. If an analysis of information furnished by the company indicates that unfavorable trends are developing which may possibly adversely affect its future operations, the Department of Defense may, at its option, bring such matters to the attention of the company and request a statement as to what action, if any, is contemplated to deal with such unfavorable trends.

Dated: February 28, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4806 Filed 3-4-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

National Capital Parks Regulations; Lafayette Park Structure Prohibitions and Sign Limitations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the National Capital Parks regulations in § 50.19 of 36 Code of Federal Regulations to prohibit stationary structures, with certain exceptions, and to place reasonable limitations on the size and number of stationary signs in Lafayette Park. The National Park Service has received numerous complaints from the general public concerning the presence in Lafayette Park of semi-permanent, billboard-type signs and various structures that substantially distract from the aesthetic quality of, and occupy a disproportionate amount of space within, the Park. Furthermore, concerns have been raised about damage to the Park and public safety. The rule addresses the use of Lafayette Park through a balancing of First Amendment freedoms of speech and expression against the rights of the park visitor to utilize this historic Park for traditional recreational and aesthetic purposes. A proposed rule was published on August 20, 1985. 50 FR 33571. Comments were accepted until October 21, 1985.

EFFECTIVE DATE: April 4, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, telephone (202) 426-6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, DC 20240, telephone (202) 343-4338.

SUPPLEMENTARY INFORMATION:

I. Background

As pointed out by the American Society of Landscape Architects Lafayette Park is a publicly-owned historic landscape and is part of the Lafayette Square Historic District. Once part of the White House grounds, Lafayette Park was separated from the White House in the early 1800's by President Thomas Jefferson for the use of residents and visitors to Washington.

The visual quality of Lafayette Partk is of extreme importance as the Park functions as a formal garden park of meticulous landscaping, with flowers, trees, fountains, walks and statues. In addition, Lafayette Park is a critical part of the aesthetic setting of the White House, literally functioning as the "front door" of that setting.

The National Capitol Planning Commission ("NCPC"), the central planning agency for the Federal Government in the National Capital Region, pointed out that Lafayette Park has been designated as a "Monumental and Decorative Park". As such, the NCPC indicated that it applies the following policies to Lafayette Park:

> Monumental and Decorative Parks, as shown on Diagrams 1, 2, and 3, [Lafayette Park appears on Diagrams 1, 2, and 3] should serve as settings to enhance public buildings, monuments and memorials; as such, their fundamental integrity should be protected. Additionally, they should serve as outdoor areas for displays and cultural activities, as well as areas for passive and controlled active recreational activities, including lunch time picnics and gatherings. . .

Lafayette Park has functioned historically as a site for residents and visitors to engage in recreational activities such as strolling through the grounds, eating lunch, reading or viewing the White House. Because of the character of the Park, more intensive recreational activities, such as softball and special events, are not allowed there. In addition, Lafayette Park has functioned historically as a site for traditional First Amendment activities, such as leafletting, making speeches, and carrying signs.

For most of the history of Lafayette Park, these many different interests—historic aesthetic, recreational, and First Amendment—have all been accommodated within this seven-acre park. However, over the past few years, Lafayette Park has been increasingly dominated by large, semi-permanent signs and structures of every sort which are often unattended by their owners.

It has not been uncommon to have signs as large as twenty-five feet by twelve feet in the Park for months at a time. In addition, it has not been uncommon to have structures ten feet high, eight feet long and four feet wide in the Park for long periods of time. Further, while the number of signs and structures increases and decreases as demonstrators come and go in the Park, there has generally been a large number of such materials in the Park at the same time. In August of 1984, for example, there were one hundred and forty signs in Lafayette Park on a continuing basis. Rather than a testament to differing opinions, the majority of these signs expressed the views of a handful of demonstrators. Eighty of the signs

present in the Park in August of 1984 belonged to one demonstrator. Over the past two years, two to six demonstrators have accounted for a vast majority of the signs that continuously occupy a large portion of Lafayette Park.

In July of 1985, there were seventy-seven signs in Lafayette Park, ranging in size from two feet by three feet to a sign eight feet by twenty-four feet. There were three signs that measured twelve feet by fifteen feet and thirteen signs that were at least eight feet wide. One of these signs indicated that thirty-three of the total number of signs belonged to two persons who had been in the Park since June of 1981. In addition to signs, there were various structures in the Park, including pyramids, chairs, a grocery cart, and desks.

These signs and structures have substantially tipped the delicate balance between casual use and the exercise of First Amendment rights that has existed in Lafayette Park for decades. Commenters on the proposed regulations indicate repeatedly that they have been preempted from utilizing the Park by a few demonstrators who physically occupy a great deal of space in the Park with signs and structures. Further, commenters indicate that it is difficult to get a clear view of the White House from behind the signs and structures in Lafayette Park. One demonstrator has had up to eight billboard-type signs, along with various smaller signs, lined up on the south sidewalk of the Park for long periods of time. This individual, along with one other demonstrator, has occupied almost half of the length of the south sidewalk of the Park, substantially interfering with the view of the White House from Lafayette Park.

In addition to the problem of a few individuals continuously preempting the use of a large portion of the Park, visitors complain frequently that the numerous large signs and structures amount to a visual blight in the Park and generally create an offensive and unsightly appearance in an otherwise formal and historic park area. Prior to the publication of the proposed rule, the National Park Service received at least twenty-five complaints, most requesting some action, concerning Lafayette Park. Each month since then (August, 1985), the Park Service has received additional complaints about the unsightly condition of Lafayette Park. Despite the fact that a few person commenting on the proposed regulations indicated that they did not recognize an aesthetic problem in the Park, almost two hundred other people complained about the present condition of the Park, some even saying that they will not visit, walk through or even drive past the Park. Many of these commenters acknowledged the importance of exercising First Amendment rights in the Park, but then plead for some balance between the rights of demonstrators and those of visitors to enjoy the beautiful and historic park.

Further, conversations with United States Park Police officer assigned to Lafayette Park during tourist seasons reveal that they receive frequent complaints about the visual blight in Lafayette Park. Complaints noted by the officers include the fact that large signs interfere with the view of the White House, prevent picture taking and, together with the ever-present structures, generally ruin the aesthetic quality of Lafayette Park.

In addition to aesthetic concerns, Park Service workers and members of the public have expressed concern about the safety of large billboard-type signs. Large signs in the Park are generally constructed of plywood and are very oftern crudely supported. Many times, the signs are not attended by their owners. On several occasions, large signs have been blown down by heavy winds and, in one case, a sign struck a pedestrian resulting in a head wound requiring several stitches. In addition, structures, often crudely constructed and sometimes utilizing glass pieces and protruding nails, present other safety hazards.

The Park Service has attempted to work with individuals having large signs and structures in order to ensure that these items are safe and properly secured. However, it has been the experience of the Park Service that it is almost impossible to keep up with the varied signs and structures that sometimes appear overnight in the Park. Further, some demonstrators are uncooperative in making changes in their property. Even when demonstrators will cooperate in attempting to make their signs and structures safer, the methods for accomplishing that end sometimes result in damage to the Park. For example, it has been found that large signs are often most safely secured by placing numerous stakes in the ground, causing damage to the turf and the Park's inground sprinkler system.

In addition to the damage caused by methods necessary to secure large signs and structures, the signs and structures themselves have caused injury to park resources. Whether the result of being permanently anchored to the ground or because of sheer size, many of the signs and structures in the Park can be moved only with considerable difficulty and only if the owner can be located. As long as large signs and structures are in the Park, it is impossible for the Park Service to perform routine maintenance such as watering, trimming and grass cutting. The placement of heavy signs and structures on the ground causes considerable damage to the turf, creating large patches of dried and dead grass. In addition, bricks making up the sidewalks through the Park have been crushed and damaged by large structures.

The presence of structures has been of particular concern in Lafayette Park. Without limitations on the size and use of structures, individuals have accumulated an assortment of buildings and rubbish in the Park, often unattended. Several two and three story structures have been built in Lafayette Park. Desks, chairs, bookcases, carts, doors and a porcelain toilet have all appeared in the Park. One individual filled a broken grocery cart with trash, stating that it was a symbolic structure. All in all, the presence of these items has produced a dump-like atmosphere in this historical and finely landscaped national park.

The National Park Service has attempted to deal with these problems under existing regulations. Starting in September of 1984, the Park Service began doing regular inspections of Lafayette Park in order to remove articles and conditions that violated federal regulations. Primarily utilizing its authority to remove stored and abandoned property, the Park Service removed many truckloads of property and trash from the Park. However, this authority was insufficient to deal with the many large signs and most of the structures that have appeared in Lafayette Park, as evidenced by the description of the condition of the Park in July of 1985. While there were fewer signs in the Park in July of 1985 than in August of 1984, this is due less to Park Service efforts to enforce existing regulations than to the fluctuation in the number of signs as demonstrations begin and end.

The National Park service currently has no effective regulations governing the use of signs and structures in Lafayette Park. Under present regulations, individuals and groups numbering twenty-five participants or less need not apply for a permit for, or even notify the National Park Service of, a demonstration in the Park. While groups numbering over twenty-five participants must apply for a permit to demonstrate, there are no provisions in

existing regulations that would allow the Park Service to deny a permit for any kind or size sign. Under present regulations, a demonstrator may have as many signs, in whatever size, as Lafayette Park can accommodate.

Likewise, there are limited regulations governing structures. While a permit is necessary to erect a structure in any park area, the Park Service has no regulation prohibiting individual structures unless they cannot be accommodated in the Park. Therefore, existing regulations would not allow the Park Service to deny a permit for a symbolic display comprised solely of a porcelain toilet, for example.

In addition, it is often difficult to enforce existing regulations concerning trash and abandoned property. For example, the Park Service cannot always tell what property is trash and what is not. One individual had a cone covered with a pair or men's underwear in Lafayette Park. The individual claimed that the object was a symbolic structure.

Further, the Park Service has had a difficult time enforcing abandoned property regulations as it is not always possible to tell what is abandoned and what is not. One individual will often claim most of the signs and structures in the Park only to disappear the next day when some other individual claims all the objects. In addition, demonstrators are frequently in and out of the Park, making it impossible to prove clearly that they have abandoned their property. Finally, there are so many signs, structures and other property in Lafayette Park at any one time that it is difficult for Park employees who work in the Park on a daily basis to tell what property belongs to which demonstrator.

Because of the lack of regulations to deal effectively with aesthetic, public safety and resource protection problems in Lafayette Park, the National Park Service proposed amendments to the present demonstration regulations on August 20, 1985.

II. Analysis of Comments

1. Comments in Support

The National Park Service received one hundred and twelve letters and post cards and one petition containing one hundred signatures from individuals and groups supporting the proposed regulations. Most of these commenters expressly stated that large signs and structures in Lafayette Park substantially disrupted their enjoyment and view of the Park. Many found the Park to be "embarrassing" and "disgusting" due to the on-going demonstrations. Illustrative of many of these comments is the following:

> Congratulations and thank you for the newly announced regulations designed to clean up Lafayette Park while protecting demonstrators' First Amendment rights.
>
> The protection of these free-speech rights is highly important to me because I myself have marched and carried signs in support of a number of important causes. The proposed limit on size of signs and the "attendance" requirement is very reasonable and logical. Otherwise, the "demonstration" becomes "dumping" in a public place.
>
> The current state of the park is deplorable. In my walks to and from work, what I see is trash strewn through-out the park. The protesters are "few and far between." Numerous tourists are seen being frustrated in their attempts to view and photograph the White House and other fine architecture surrounding the park. The general appearance of the demonstrators and their shantytown is such that dialogue or any type of contact is avoided. Tourists returning to small towns recite with disgust how "the Government" has allowed protesters to litter, loiter, and camp permanently in this place which should belong to all the people.

A travel professional who works a few blocks from the White House wrote:

> I can speak from personal experience of the negative impression the scene in Lafayette Park presents to visitors, especially foreign visitors. Travel, especially to our beautiful monuments, constitutes the largest business in our area, larger even than government. We cannot tolerate this blight any longer.

Other commenters also spoke of the physical damage done to the Park and the potential safety hazards posed by the large, unattended signs and structures, as well as aesthetic concerns. An example of this is the following excerpt from one letter:

> I write to *support* the proposed amendments to NCP regulations concerning structures and signs in Lafayette Park, published on August 20th in the Federal Register. The amendments are a balanced approach to a serious problem, and protect the rights of those who wish to enjoy the park for its intended and primary purpose, while permitting exercise of 1st Amendment rights in this public space. Current regulations, or lack thereof, have led to a deterioration in both the physical/environmental integrity of the park, and in its aesthetic qualities. I live and work near the Park and have personally ovserved the destruction that some of these structures and signs have had on the grassy areas. The number of signs—many with the same or similar messages—detracts from both the acutal physical space that is available for enjoyment of this area for its intended use—as a park, and from the beauty of the area. The proposed amendments are a reasonable time, place and manner restriction which protects the park itself, as well as the rights of those who use the park as a park, yet permits those who use it only as a public forum to do so. I urge adoption of the proposals without substantive change. (Emphasis in the original).

The American Society of Landscape Architects summed up many of the comments received when it recommended the adoption of the proposed regulations and succinctly stated the reasons as follows:

> Lafayette Park has long been a major component in the historic setting of the White House, and is of critical importance in its context with the City of Washington.
>
> The park is a key experience to visitors to Washington from around the world, as well as a daily experience for many local residents.
>
> The present situation is both visually unattractive and potentially dangerous to visitors and users of what has historically been a meticulously maintained passive environment.

Many of the commenters expressed their commitment to the exercise of First Amendment rights but then stated their view that that exercise should not preclude others from enjoying the Park. The common thread running through the letters supporting the proposed regulations was a plea for balance, as evidenced in the following excerpt from one letter:

> I strongly support freedom of expression and am eternally vigilant to trends that impinge on that freedom. However, there must be balance. In recent years, there has been no such balance. Signs in Lafayette Park are unsightly, too large, and precariously erected. The safety of visitors to the park as well as the desire of visitors to the city to appreciate its sights must be weighed against the freedom of expression to achieve the required balance.

Most of the commenters expressed their belief that the proposed regulations represent the proper balance between the exercise of First Amendment rights and the rights of Park visitors. A judge on the United States Claims Court wrote as follows: "The proposed amendment represents a good-faith effort to balance the exercise of first amendment rights with the very real spoliation of Lafayette Park." The American Society of Landscape Architects commented as follows:

> The ASLA is aware of the sensitivity of this issue in regard to First Amendment freedoms, and feels that the proposed regulations are fair and appropriate in balancing those freedoms against the rights of the park visitor. The American Society of Landscape Architects recommends the adoption of these regulations.

2. Comments in Opposition—Too Lenient

The National Park Service received seventy-six letters and post cards from individuals and groups who felt that the

proposed regulations were too lenient. One letter contained eight signatures. In addition, the Park Service received one petition with nine signatures requesting that the regulations be changed to allow only hand-carried signs in Lafayette Park.

The majority of these commenters suggested that the National Park Service place a total ban on stationary signs in Lafayette Park. For example, J. Carter Brown, writing for the Commission of Fine Arts, indicated that the Commission "can testify only too well the degree to which this most historic of Washington's parks has been increasingly spoiled over the last few years by a proliferation of signs and other structures erected in the name of some cause." Finding that the major cause of the problems in Lafayette Park is the permanent nature of signs and structures, the Commission recommended a requirement that signs and demonstrators keep moving throughout a demonstration.

Senator Mark O. Hatfield pointed out that "Oregonians who visit Washington frequently mention their unhappiness over the lack of respect shown for the public interest in maintaining a scenic public park in front of the White House." The Senator also pointed out the substantive damage done to the Park by large signs over the years. The Senator stated that he would not object to even more restrictive size requirements and the elimination of all stationary signs. Representative John F. Seiberling questioned why any sign should be set up as a permanent fixture in the Park and suggested that the Park Service allow only one sign per person. The Architect of the Capitol and the Washington Legal Foundation, as well as many individuals, also suggested that the Park Service allow only hand-carried signs in Lafayette Park.

The National Park Service agrees that a requirement that all signs be hand-carried, rather than stationary, would better serve aesthetic, public safety and resource concerns in Lafayette Park. However, the Park Service believes that it has an obligation to attempt a less restrictive alternative, such as the regulations adopted here, to determine whether this alternative would be sufficient to meet the substantial government interests detailed. If the final regulations, once made effective, do not meet these interests, the Park Service may then consider further regulatory changes.

A number of other commenters suggested that signs and/or demonstrations be banned from Lafayette Park altogether. The National Park Service recognizes that a part of Lafayette Park's history is the Park's role as situs for free expression. The Park Service believes that it would not be appropriate to ban demonstrations from this area.

Other commenters suggested additional time and place restrictions on demonstrations in Lafayette Park. For example, the Washington Legal Foundation ("WLF") found the proposed regulations to be a "half-hearted" and "timid" attempt to deal with the problems in the Park and suggested several alternatives. Primarily, the WLF suggested a requirement that: (1) All signs be hand-carried and those signs be no larger than four feet by four feet; (2) all signs be confined to either the Northeast or Northwest quadrant of Lafayette Park; and (3) no demonstrations be allowed between 11:30 a.m. and 1:30 p.m. each day. Again, we believe that the Park Service should try the less restrictive alternative and, only if it fails, should move to more restrictive measures.

Many other commenters agreed with the WLF's proposal to close the Park to demonstrations periodically. Some suggested closing the Park at night; some suggested closing the Park on weekends. One commenter suggested that no group should be allowed to demonstrate longer than 24 hours in any one seven-day period. Finally, one individual suggested an alternative regulatory scheme that would allow larger signs, but with restrictions on length of stay.

The National Park Service did consider closing the Park to demonstrators at night. However, this limitation, as any limitation on duration of demonstrations, would preclude continuous vigils in Lafayette Park. Although the Park Service does not believe that it has a constitutional obligation to allow continuous vigils, it does not wish to preclude them unless other measures are insufficient to meet aesthetic, public safety and resource concerns.

Other commenters suggested that sign size limitations be more restrictive. The National Capital Planning Commission supported the proposed regulations but suggested that further limitations be placed on stationary signs. One individual recommended a regulation that would limit the maximum allowable sign size to three feet by three feet. This contrasts sharply with the views of commenters who felt that the sign sizes proposed in the regulations were too restrictive, as discussed below. While any decision as to allowable sign size is a difficult line-drawing exercise, the National Park Service believes that it has chosen a sign size limitation which represents a reasonable accommodation between aesthetics, resource protection and public safety, and the ability of demonstrators to convey a message.

Several commenters further suggested that the limitations on demonstrations in the proposed regulations be extended to all parks in downtown Washington. The National Park Service maintains the different parks at different aesthetic levels. For example, the Mall and the Ellipse are not maintained as formal garden parks like Lafayette Park. Further, parks like the Mall and the Ellipse can sustain greater impact. They are maintained in great part for recreational purposes. Therefore, the Park Service believes that each park must be considered separately.

Several commenters also mentioned areas in which the proposed regulations were vague, and thus needed further clarification. One commenter questioned whether limitations on signs "placed or set down" would include signs set on wheels. To clarify the intent of the regulations that all signs not hand-carried are subject to the size limitations specified, we have deleted the "placed or set down" language in the final regulations and inserted language specifically subjecting all "signs not being hand-carried" to the size limitations.

The WLF also pointed out that the provision in the proposed regulation allowing speaker's platforms is unclear as to when these structures may be used and whether they must be attended. We have revised the proposed regulations to allow the use of a speaker's platform as reasonably required to serve demonstration participants only when a demonstration actually attracts one hundred or more participants and only when the platform is being erected, dismantled or used. Likewise, for a demonstration attracting fewer than one hundred persons, the final regulations would allow a "soapbox" speaker's platform only when it is being erected, dismantled or used.

Finally, commenters pointed out that problems other than aesthetics are caused by the use of large signs and structures in Lafayette Park. The WLF expressed their concern for the safety of the White House and the President in light of the numerous means of concealment offered by large, permanent signs and structures. Another commenter indicated that large signs and structures often block passageways, benches and trash cans throughout the Park. Almost every commenter objected to the usurpation of substantial parts of the Park by a few demonstrators. The National Park Service believes that the

final regulations, coupled with existing regulatory authority, will eliminate most of these problems.

3. Comments in Opposition—Too Restrictive

The National Park Service received thirty-nine letters from individuals and groups opposing the proposed regulations. It also received a petition, with several thousand signatures, in opposition. However, after carefully reviewing the petition, it appears that many of the signatures were gathered in April and May of 1985, prior to the drafting of these proposed regulations, and in response to a preamble that speaks generally to the closing of Pennsylvania Avenue and "further restrictions on demonstrating around the White House." These pages do contain the sentence "I believe that the ethnic identity of the United States is more aptly expressed by freedom to assemble and protest in Lafayette Park than by pristine pictures of the White House". Even though most of the petition did not address the specific regulations proposed here, the entire petition was given careful consideration. We especially noted several pages that did refer specifically to provisions in the proposed regulations.

Many of the commenters opposing the proposed regulations made the point that Lafayette Park is a unique site for First Amendment activities because of the Park's close proximity to the White House and its occupants. Further, groups such as the American Civil Liberties Union ("ACLU"), the Sierra Club and the White House Vigil for the ERA, as well as individuals, indicated that Lafayette Park has long been utilized by demonstrators such as the early suffragettes to bring their message to the public. The commenters stated their belief that, because of the unique opportunities Lafayette Park offers to bring a message directly to the public and the Executive Branch, demonstrations must be allowed to continue in that Park.

The National Park Service agrees that Lafayette Park is an appropriate site for demonstrations and emphasizes the fact that the final regulations do not prohibit demonstrations in the Park. The Park Service is merely placing reasonable limitations on the demonstrations that do occur in the Park. Further, while Lafayette Park has historically been the site of many demonstrations for many different causes, the Park has become a site for permanent billboard-type signs and structures only in the last few years. The Park Service is not attempting to change the traditional use of Lafayette Park for demonstrations. Rather, it is merely attempting to solve a problem that has recently arisen in the Park.

It was pointed out repeatedly by those opposing and those favoring the proposed regulations that it has only been a handful of individuals who have had the large signs and structures in the Park. Many of those opposing the regulations seemed to believe that the proposed regulations would somehow prevent, or were intended to prevent, those individuals from demonstrating in Lafayette Park. The National Park Service does not intend to prohibit any individual from demonstrating in Lafayette Park. The individuals now demonstrating in the Park may remain there under the final regulations. They simply cannot continue to have large, unattended signs and structures. Each demonstrator may have two four-foot by four-foot signs as long as they are attended. Further, demonstrating groups may have a speaker's platform and hand-carried structures.

The ACLU specifically questioned the motives of the National Park Service in promulgating these regulations, suggesting that the sole purpose for the amendments is to harass certain individuals now demonstrating in Lafayette Park. To support this proposition, the ACLU attached to its comments several affidavits by Concepcion Picciotto, a long-time demonstrator, that allegedly prove that the Park Service is allowing private citizens to destroy demonstrators' signs.

The final regulations are intended to address real and substantial problems now existing in Lafayette Park. If the regulations, when effective, have a greater impact on one group of demonstrators, it is only because those demonstrators are the ones causing the substantial problems in the Park with large signs and structures.

Further, we have examined Ms. Picciotto's complaints that the Park Police failed to stop private individuals from damaging her signs. Police reports indicate that Park Police arrived only after the alleged damage was done in each of these incidents. Having no authority to make arrests for misdemeanors not committed in their presence, the police appropriately referred Ms. Picciotto to the Citizens Complaint Bureau. See 16 U.S.C. 1a–6.

In another incident not mentioned by the ACLU, the Park Police went to Lafayette Park in response to a complaint by Ms. Picciotto that she had been assaulted and one of her signs had been damaged. The alleged assailant, a member of the military, admitted to destruction of the sign. He was then taken into custody and, pursuant to Park Police General Orders, turned over to military authorities. The Park Police officer handling the complaint advised Ms. Picciotto to go to the Citizens Complaint Bureau to file a complaint and gave her a brochure on the Bureau. The officer later went to the United States Attorney's Office to seek a warrant against the assailant. That office declined to approve the application for a warrant.

Some commenters also suggested that restrictions on demonstrations on the White House sidewalk make Lafayette Park an even more important site for demonstrations directed toward the White House. It is true that restrictions were placed on the size, placement and construction of signs used on the White House sidewalk in July of 1983. These restrictions were intended to meet security as well as aesthetic interests on the sidewalk and were promulgated largely because of a proliferation of large, unattended signs and structures. The imposition of those regulations appears, in large part, to be the reason for the movement of large signs and structures to Lafayette Park. Once in Lafayette Park, the signs and structures grew in size and number until the Park Service was forced to consider additional regulatory limitations there also.

The Park Service believes, however, that the final regulations, coupled with the White House sidewalk regulations, leave open ample avenues for communication. Neither regulation prohibits leafletting, making a speech, having marches, exhibiting signs or engaging in any other traditional method of exercising First Amendment rights. In fact, an individual may have a sign as long as twenty feet and as wide as three feet on the White House sidewalk not three hundred feet from the White House.

One commenter argued that "by precedent" the proposed regulation would limit demonstrations in other parks. The final regulations are specifically applicable to Lafayette Park alone and would not place any limitations upon demonstrations in any other park, such as the Ellipse or the Mall.

Many of the commenters opposing the proposed regulations, such as the ACLU, take the position either that there is no problem in Lafayette Park or that the problem can be handled under existing regulations. The ACLU, for example, stated that the Park Service has misrepresented the current situation and that visitors to the Park find the ongoing demonstrations to be "a thrilling example of their democracy in action."

The ACLU further stated that visitors are not precluded from using Lafayette Park as they are free to walk through the demonstration sites. Other commenters questioned whether the view of the White House from Lafayette Park is really blocked by signs.

In response, the National Park Service points out that almost two hundred persons or groups wrote to the Park Service to support the proposed limitations on demonstrations in Lafayette Park or to request more stringent restrictions. Some of those letters have been quoted in part above. Commenters also pointed out the difficulty in getting a clear view of the White House from Lafayette Park.

It is obvious that some people find the aesthethic quality of Lafayette Park to be damaged by large signs and structures. It is equally obvious that there are divergent views on the question of aesthetic quality in Lafayette Park. For this reason, the Park Service has attempted to take a "middle" position in the final regulations that accommodates the exercise of free speech in the Park while still maintaining the aesthetic quality of the Park and meeting resource protection and safety concerns. We have carefully reviewed the regulations and found them to represent such "middle ground".

The ACLU and others did bring to our attention an additional aesthetic problem in the area of Lafayette Park. In its comments, the group indicated that tour buses and trucks parked along Pennsylvania Avenue obstruct the view of the White House from Lafayette Park more than signs along Pennsylvania Avenue. Although the primary focus of the proposed regulations is the maintenance of the aesthetics in Lafayette Park itself, the Park Service is concerned with maintaining as unobstructed a view as possible of the White House. For this reason, and in response to the ACLU's comments, we have initiated discussions with the District of Columbia, which has primary law enforcement jurisdiction on Pennsylvania Avenue, in an effort to eliminate parking, especially by buses and trucks, on the Avenue.

None of the commenters opposing the regulations seem to dispute the safety problems and resource damage done by large, unattended signs and structures. However, some commenters felt that vigorous enforcement of existing regulations would eliminate these problems as well as aesthetic concerns. The ACLU suggested that the National Park Service simply spend money to repair damaged areas and commented that other events do equal damage to the parks.

The National Park Service has attempted to alleviate current problems in the Lafayette Park by utilizing existing regulations, as noted above. Starting in September of 1984, and after consultation with the ACLU, the Park Service began a program of weekly park inspections for the purpose of spotting items in violation of the regulations and removing them. However, this effort did not succeed in eliminating large, unattended signs and structures in Lafayette Park. This failure was due primarily to the fact that there are no regulations at present that prohibit structures or place limitations on signs in the Park. As discussed earlier, regulations prohibiting abandoned property are practically impossible to enforce because of present conditions in the Park. Therefore, additional regulations are necessary.

As to the ACLU's suggestion that the Park Service should allow the damage caused by large signs and structures and simply spend the money to repair it, the National Park Service does not believe that the Government, and ultimately the taxpayers, have a constitutionally-imposed duty to pay for unlimited destruction of park resources by a few individuals. The Supreme Court affirmed this when it found in *Regan* v. *Taxation With Representation of Washington*, 461 U.S. 540, 549, that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe that right.

The Park Service realizes that signs properly supported will cause damage to the Park. These final regulations limit that damage by requiring signs to be smaller, and by prohibiting most structures. The Park Service believes that the regulations achieve a reasonable balance between the right to demonstrate and the right of other citizens to have the parks maintained in an intact condition.

As to the ACLU's comments that the Park Service has allowed activities on the Washington Monument Grounds on July 4th of each year that result in substantial damage to that area, the Park Service must point out that the Monument Grounds are not maintained at the same level of aesthetic quality as Lafayette Park. For example, softball, other games, and special events are allowed on the Monument Grounds but are not allowed in Lafayette Park. Further, the Park Service is taking well-publicized steps to change the July 4th program to minimize resource damage.

The ACLU also indicated that Lafayette Park suffers some damage every four years as a result of Inaugural activities. As pointed out by the ACLU, the Park Service has no veto power over these activities, the activities being congressionally and constitutionally mandated. Moreover, the groups causing that damage have been required to pay for all necessary repairs.

Even when aesthetic and resource damage and threats to public safety were acknowledged, some commenters took the position that the Park Service is legally barred from addressing those concerns. The ACLU in particular argued that the exercise of First Amendment rights must predominate over other government interests. Many of those opposed to the proposed regulations took the position that destruction of aesthetic quality must be tolerated to accommodate First Amendment rights. Among these were numerous activist groups who signed a statement issued by a group called "Friends of First Amendment Rights in Lafayette and other Federal parks."

The National Park Service believes that the exercise of First Amendment rights is of great importance. However, it also believes, in accord with a multitude of court decisions, that reasonable limitations may be placed upon that exercise when necessary to meet legitimate government interests. It is beyond question that resource protection and public safety constitute substantial government interests. We also believe that the Supreme Court has indicated quite clearly that aesthetics also rises to the level of a legitimate government interest. Recently, the Court stated, in *City Council* v. *Taxpayers for Vincent*, 104 S. Ct. 2118, 2129 (1984), that "the state may legitimately exercise its police powers to advance aesthetic values." More specifically, both the Supreme Court and this Circuit have recognized the substantial government interest in "maintaining the parks in the heart of the capital in an attractive and intact condition." *White House Vigil for the ERA Committee* v. *Clark*, 746 F.2d 1518, 1529 (1984), quoting *Clark* v. *Community for Creative Non-Violence*, 104 S.Ct. 3065, 3070 (1984). The Court of Appeals went further in saying "Finally, the government has a substantial interest in the preservation and enhancement of the human environment; aesthetics are a proper focus of governmental regulation." 746 F.2d at 1528.

The National Park Service believes that these decisions sanction reasonable limitations upon activity that diminishes the aesthetic quality of, and that does damage to, Lafayette Park. However, many of the commenters who opposed the proposed regulations stated that they believed that these regulations

did not represent such reasonable limitations.

Several commenters opposed the size restrictions placed upon signs in the proposed regulations. Those commenters argued that large signs are necessary in order to have their messages read from a long distance, especially from the White House, and are necessary for complex messages.

The National Park Service has documented that a four-foot by four-foot sign can be read from a considerable distance. It may be true that, depending on the size of the printing, a sign that size could not be read from the White House sidewalk. However, signs as large as three feet high and twenty feet long are allowed on the White House sidewalk itself. Further, the Park Service does not believe that it has a constitutional obligation to ensure that a demonstration sign can be read from any arbitrary distance chosen by a demonstrator or that the sign be large enough to accommodate any lengthy and complex message an individual can imagine.

Further, the ACLU and the Sierra Club stated that they saw no reason for a limitation on the thickness of allowable signs. The National Park Service believes that a limitation on the thickness of signs is necessary to prevent individuals from erecting signs that are, in reality, structures, for example, a "sign" four feet long, four feet wide and four feet deep. In fact, demonstrators have argued in court that structures that are four-sided and that have been used as living accommodations are "signs". Further, the quarter-inch requirement assures a relatively light sign that can be moved by demonstrators when they leave or when park maintenance is necessary. However, the Park Service is revising the proposed regulations to exclude from the thickness provision braces reasonably required to support lawful signs so long as the braces are not used to form an enclosure of two or more sides. This allows demonstrators to properly brace their sign without fear of running afoul of these regulations.

The ACLU also suggested that the Park Service allow signs to be up to six feet in height if it is going to allow them to be elevated to a height of six feet. We must reject this suggestion. The Park Service is proposing a regulation that would allow signs to be elevated to six feet to accommodate supports that might raise a sign above the four-foot level. The purpose of this is to accommodate demonstrators and public safety concerns, not to create a loophole through which billboard-type signs again can creep into the Park.

While agreeing that signs should be attended, most commenters opposing the proposed regulations disagreed with the requirement that a person stay within three feet of his/her sign. The ACLU suggested that there be exceptions for demonstrators who, for example, wish to cross the street to chat with passersby, retrieve a hat blown off by the wind or go to the restroom. Another commenter suggested that sign owners merely be required to stay within the Park or on the surrounding sidewalks.

The Park Service has carefully considered these comments but can think of no regulatory alternative that would assure that signs are, in fact, attended. It would be impossible to enforce a regulation that contained the kinds of exceptions suggested by the ACLU or the suggestion that sign owners be somewhere in the Park or on surrounding sidewalks. Further, a regulation requiring persons to be in physical contact with their signs at all times on the White House sidewalk, a regulation upheld by this Circuit, has been in effect for several years and has not discouraged the thousands of demonstrators who use that site each year. The most effective enforcement scheme is to require physical contact with signs. There is no doubt in that situation as to the ownership of signs. However, the National Park Service did not wish to prevent individuals from moving a short distance away from their signs to conduct other demonstration activities.

Several commenters argued that the Park Service has regulations capable of dealing with any attendance problems now occurring in Lafayette Park. While there is a regulation prohibiting the abandonment of property in the parks, the regulation has been ineffective in preventing persons from leaving signs and structures unattended for long periods in Lafayette Park, as discussed above.

Another commenter suggested an exception to the attendance requirement that would allow demonstrators to stack and store signs for later use. However, the Park Service believes that any attendance requirement must be applied across the board to standing or stored signs.

Several commenters opposed the limitation on the number of signs any one demonstrator may have in the Park at any one time. The ACLU complains about the limitation on "the quantum of a person's speech". The National Park Service does not believe that an individual has a constitutional right to an unlimited "quantity" of free speech regardless of the impact of that speech on other interests. Without a limitation on the number of signs, a few demonstrators would be free to occupy the whole of Lafayette Park to the exclusion of everyone else and to the detriment of park resources.

Several commenters also opposed the proposed prohibition on structures in Lafayette Park. The ACLU indicated that such a prohibition is not necessary and that it is overbroad. While admitting that large, heavy structures such as desks, bookcases, and porcelain toilets "may" be inappropriate in Lafayette Park, the ACLU argued that present regulations are sufficient to keep these items out of the Park. The National Park Service disagrees.

There are no regulations that prohibit structures in Lafayette Park. The Park Service has been able to deny permits for such massive construction projects as public libraries and spaceship landing facilities under regulations which allow the Park Service to deny permits for activities that cannot be reasonably accommodated in the Park. However, it is unclear whether this regulation could be applied to a desk or porcelain toilet. At any rate, the Park Service believes that a more specific regulation gives more specific notice to the public concerning items that are prohibited.

Another commenter suggested that the term "structure" be defined. While we believe that the term has a generally understood meaning, we have revised the regulations to give the public notice of the usage of the term by providing examples of prohibited structures, and by listing those items that are not considered to be "structures".

The ACLU and the Sierra Club also argued that the proposed prohibition is overbroad as it would also prohibit "well-recognized items" such as tables for literature and folding chairs. The Park Service does not believe that use of tables and chairs is protected under the First Amendment, and even if it were, there is ample government interest in aesthetics, park protection and public safety to support a neutral, across-the-board ban on such use. However, in an effort to respond to the concern about a prohibition of traditional symbolic materials, we have revised the regulations so as to allow any structure in Lafayette Park that is being hand-carried. This exception, then, would allow symbolic structures, such as coffins and cages, to be carried in the Park.

In its comments, the ACLU also argued that the Park Service, not the demonstrators, is responsible for the dump-like appearance of the Park. We

do not believe this argument to have merit. For example, the ACLU faults the Parks Service for not seizing chairs, the exact items that the ACLU later characterizes as "well-recognized" demonstration materials. The group also criticized the Park Service for not removing other items, many of which the record shows have been seized by the Park Service and then repeatedly returned to the Park by their owners. Finally, the ACLU criticized the Park Service for not allowing demonstrators to construct and repair their signs in Lafayette Park. We do not believe that the National Park Service must allow Lafayette Park to become a construction area.

Ten persons wrote to the National Park Service opposing the proposed regulations because the Department of the Interior allegedly did not enforce building height laws to prohibit the construction of Metropolitan Square on 15th and F Streets. None of the comments contained substantive criticisms of the specific provisions containd in the proposed regulations. Since the building of Metropolitan Square is unrelated to anything in the proposed rulemaking, we simply note these commenters' opposition in this rulemaking.

Several commenters, including the ACLU, suggested a public meeting or private negotiations concerning this rulemaking effort. It would be inappropriate in this instance to have private negotiations with any one individual or group. This rulemaking has been thoroughly and intelligently discussed in the media, through editorials, articles and letters to the editor, and thoughtful comments have been received from all sides of the question. The National Park Service does not believe that a public meeting would contribute any comments or insights not already expressed and addressed here.

III. Regulatory Changes

As is evident from the foregoing discussion of comments on the proposed regulations, there is a divergence of views on the proper regulatory scheme for Lafayette Park. The National Park Service, in its role as manager of the nation's parks, must ultimately decide how best to administer and manage Lafayette Park. The task is made all the more difficult by the dual functions of that management—to conserve the resource while at the same time allowing public use.

The National Park Service has carefully reviewed the proposed regulations in light of all the comments. The Park Service has found that, with a few changes, as discussed below, the proposed regulations represent the best balance possible between the exercise of First Amendment rights and the maintenance of visual quality, resources and public safety. For this reason, the National Park Service adopts the proposed regulations, with noted changes, as the final rule amending 36 CFR Part 50. The specific changes are discussed below.

1. Signs

The National Park Service is amending its regulations to limit the size of stationary signs permitted in Lafayette Park; limit the number of stationary signs one individual may have in the Park at any one time, and require that stationary signs be attended.

By amending its regulations, the National Park Service is not prohibiting demonstrations in Lafayette Park. Nor is it placing any limitation on signs that are hand-carried. The Park Service is merely placing reasonable, content-neutral limitations on stationary signs used in Lafayette Park so that visitors might be able to enjoy the history and beauty of the Park while demonstrators continue to have ample avenues of communication. In addition, the final regulations would apply only to Lafayette Park and not to the many other park areas in close proximity, for example, the Ellipse on the south side of the White House.

Specifically, the final regulations limit the size of stationary signs permitted in Lafayette Park to the dimensions of four feet in length, four feet in width and one-quarter inch in thickness. Such a size limitation would prohibit the immense billboard-type signs that now dominate Lafayette Park and which substantially impact the aesthetic values of the Park, while creating safety concerns and seriously damaging park resources.

The proposed regulations have been changed slightly to make it clear that the size and sign limitations apply to all signs that are not hand-carried. Therefore, the limitations specified would be applicable to a sign placed on wheels when that sign is not being hand-carried.

As noted in the notice of proposed rulemaking, the National Park consulted its *Service Sign System Specification Manual* ("Manual") in order to arrive at a permitted sign size that fully accommodates the needs of demonstrators. The Manual is utilized by National Park Service personnel to determine the sign size and lettering necessary to be adequately seen by pedestrian traffic. Signs utilized by the Park Service contain directions, instructions, prohibitions and warnings.

Utilizing standards set forth in the Manual, it was calculated that a sign four feet by four feet could contain at least ten lines of writing in a letter size that could be seen easily up to one hundred feet away from the sign. We are aware that signs with that lengthy a message may not be readable from the White House or the White House sidewalk. However, the National Park Service does not believe that it has an obligation to allow signs that are large enough to be read from any distance a demonstrator chooses. Further, signs up to three feet wide and twenty feet long can be used on the White House sidewalk itself.

In addition, in July of 1985, forty-four percent of the seventy-eight signs in Lafayette Park had a message consisting of ten words or less; of these, fifty percent had messages of five words or less. These messages could easily be placed on a four by four sign in very large lettering that probably could be seen even from the White House sidewalk.

On the basis of these considerations, it was determined that a four-foot by four-foot sign offered an effective means of communication for demonstrators. Further, the dimensions stated conform to a standard size of plywood commercially available. While there are no magic dimensions above which damage will certainly occur and below which government interests will certainly be satisfied, the Park Service has attempted to accommodate the needs of both visitors and demonstrators with this selection of permissible sign size.

In addition, the National Park Service is limiting the thickness of stationary signs allowed in Lafayette Park to one-quarter inch. This requirement prevents individuals from claiming all manner of structures as signs. Without a thickness restriction, an individual could utilize a "sign" that was four feet long, four feet wide and four feet thick. A quarter-inch was chosen as the maximum thickness dimension because that is a standard size of plywood, the material most often used for signs in Lafayette Park, and is relatively light and easier to move than other plywood of greater thickness. Park Service employees indicate that quarter-inch plywood weighs half of what half-inch plywood weighs. For example, a four-foot by eight-foot sheet of external plywood one-quarter inch thick weighs twenty-four pounds; the same sheet one-half inch thick weighs forty-eight pounds.

Language has been added to the final regulations to make it clear that the sign thickness limitation is not applicable to braces that are reasonably required to meet support and safety requirements. However, this exclusion is not intended to allow huge "A-Frame" type supports or other supports that are not reasonably required to support a four by four sign. In addition, braces may not be used to form an enclosure of two or more sides. This requirement is added to assure that individuals do not use the exception to the thickness limitation to convert their signs into structures, shelters or places for storage of property.

To accommodate individuals and groups who wish to have larger signs, the National Park Service has exempted all hand-carried signs from these size limitations. This allows demonstrators to have large signs, which includes banners, but assures that the signs will not cause damage to park resources because they will not be placed on the ground, will not create safety concerns because they will be held by demonstrators, and finally, will not create aesthetic problems because they can be easily moved and will not be permanent in nature.

To avoid circumvention of the size limitations on stationary signs, the final regulations also prohibit a conforming-size sign from being elevated to exceed a height of six feet above the ground. It would do little good to place limitations on the height of stationary signs only to have them again become billboard size by utilizing posts or other means of elevation. In addition, such elevation over six feet could result in additional safety problems. The National Park Service is allowing signs to be elevated in order to accommodate the use of supports and to allow demonstrators to make signs more visible.

Also to avoid circumvention of the size limitations, the final regulations prohibit the arrangement or combination of stationary signs so as to exceed the permitted size limitations. Again, it would be useless to institute sign size limitations if those limitations could be easily circumvented by combining two or more signs so as to create a billboard effect.

The proposed regulations have been revised slightly to prohibit the arrangement of signs so as to form an enclosure of two or more sides. This requirement, like the parallel requirement for sign bracing, prevents the use of signs for noncommunicative purposes such as for structures, shelters, and storage spaces.

To avoid the problem of one individual utilizing a great deal of space with unlimited numbers of signs and to avoid the massive accumulation of signs that is now occurring in the Park, the National Park Service is limiting the number of stationary signs that a single individual can have in Lafayette Park at one time. Present regulations do not prohibit a single individual from monopolizing any amount of this national park that attracts thousands of people each year by just adding sign after sign to his or her collection. The final regulations eliminate this unfair usurpation of park land by limiting each person to two stationary four-foot by four-foot signs at any one time in Lafayette Park. This provision would also diminish the aesthetic impact that a few individuals could have if allowed to accumulate unlimited numbers of signs. The Park Service believes that this is a reasonable accommodation of both visitors and demonstrators.

In addition to limiting the number of signs that an individual may have in Lafayette Park, the final regulations require that stationary signs in the Park be attended. The term "attended" is defined in the regulations as being within three feet of a sign. This requirement assures that demonstrators take responsibility for their signs. Specifically, the attendance requirement assures that signs can be readily identified with specific individuals so that safety problems can be quickly rectified, so that signs can be moved temporarily for routine park maintenance such as grass cutting, trimming and watering, and so that Park Service personnel can tell which signs are abandoned. Further, we do not believe that individuals have a right to permanently usurp public park areas by erecting signs and then leaving them to attend to other business.

The definition of the term "attended", *i.e.*, within three feet, was not an easy line to draw. The three-foot distance requirement was first suggested by the Court of Appeals for the District of Columbia Circuit. In the course of reviewing a preliminary injunction against enforcement of the White House Sidewalk regulations, the Court modified the Park Service's definition of the term "attended" to require individuals to be within three feet of their signs. *White House Vigil for the ERA Committee* v. *Watt*, No. 83–1775 (D.C. Cir., Order issued Aug. 8, 1983). While the Court finally approved the original definition, *i.e.*, in physical contact, for the White House Sidewalk, we adopted a three-foot requirement for Lafayette Park to enable demonstrators to move a short distance from their signs to carry on other activities such as engaging in discussions with others or passing out leaflets or other publications.

We do not believe that a less restrictive regulation would meet legitimate needs in Lafayette Park or would be enforceable. Requiring only that an individual be somewhere in the seven-acre Park, as suggested by one commenter, would not meet the need for the Park Service to identify specific individuals with specific signs. Neither could such a requirement be effectively enforced. Likewise, a regulation allowing individuals to leave the Park to eat or use the bathroom or chat with persons on the White House Sidewalk, as suggested by other commenters, would also defeat any efforts toward accountability and would be impossible to enforce.

The National Park Service believes that the sign limitations described will together solve many of the problems that have arisen in the Park. While each restriction separately benefits the Park and the public, no restriction alone meets all of the Government's interests. For example, a prohibition of unattended signs alone would not necessarily prevent an individual from utilizing a disproportionate amount of space in the Park. Without corresponding size and number limitations, that individual could surround him/herself with a number of large signs and still be within three feet of some part of each sign. Sign size and number restrictions, without a requirement that the signs be attended, would result in the numerous problems associated with absentee owners, as described above.

2. Structures

In addition to restrictions on the use of signs in Lafayette Park, the National Park Service is prohibiting the use of stationary structures in the Park, with the exception of certain speaker's platforms.

Structures have substantially intruded upon visitors' enjoyment of Lafayette Park. The lack of specific restrictions in existing regulations has led to massive structures being placed in the Park. These structures substantially detract from the view of the Park and monopolize large portions of the Park. Further, it has been the experience of the Park Service that some demonstrators have accumulated a large number of items in the Park, items including piles of rubbish, doors and desks, claiming that these are permitted structures. Rather than communicating a message, these items have generally evoked complaints from citizens. Finally, the presence of structures of any

sort in the fragile environment of Lafayette Park causes resource damage.

For these reasons, the Park Service initially considered a total ban on all structures in the Park. Consideration of less restrictive alternatives yielded no regulatory scheme that would allow structures to be placed in the Park while avoiding turf damage and the visual blight created by some demonstrators.

However, to avoid working a hardship on large demonstration groups that require a platform so that speakers can be heard and seen effectively by demonstration participants, the Park Service is making an exception for temporary speaker's platforms that are reasonably necessary when a demonstrating group numbers one hundred or more persons. For a group numbering less than one hundred persons, a small, temporary "soapbox" platform is allowed. Although the Park Service realizes that some damage to park resources may be done by these structures, it believes that it has an obligation to balance the needs of demonstrators with the needs and rights of the general public. Further, any harm that may be caused by the large speaker's platforms will be minimized by their short duration in the Park as large demonstrations generally do not remain in the Park longer than one day.

Several changes were made in these provisions to clarify their intent and narrow their scope. First, the final regulations require that one hundred or more persons actually *attend* a demonstration before a large speaker's platform can be used. This avoids the situation in which a group claims to have one hundred persons "involved" in a demonstration but only five show up. Second, the final regulations allow speaker's platforms only when those platforms are being erected, dismantled or used. These restrictions were added because unattended speaker's platforms would cause the same damage to aesthetics, resource protection and public safety as unattended signs. Further, without such a limitation, unattended speaker's platforms could occupy a substantial amount of space in Lafayette Park. Third, responding to suggestions by Park Police representatives that individuals be allowed larger soapbox speaker's platforms, we have revised the regulations to allow soapbox platforms as large as three feet long, three feet wide, and three feet high. Finally, we have extended the provision requiring that structures in the Park be authorized by permit to soapbox structures.

Consideration of the many comments received on the proposed regulations resulted in two other changes in the final "structures" regulations. First, so as not to prohibit altogether symbolic structures sometimes used by demonstrators, the National Park Service has revised the proposed regulations to allow any structures in Lafayette Park that, in fact, are being hand-carried. The final regulations would allow demonstrators to carry various props and symbolic structures such as effigies, coffins and crosses. The Park Service makes this change in response to commenters, such as the ACLU, who pointed out that the proposed regulations prohibited some structures the use of which would have minimal impact on park resources, public safety, and aesthetic interests. After carefully considering these comments, the Park Service has come to the conclusion that hand-carried structures, not being placed down in the Park, will not cause the resource damage and safety concerns that result from stationary structures. In addition, hand-carried structures will have minimal impact on aesthetic interests as, presumably, the structures will be in the Park only on a temporary basis.

In addition, the National Park Service has revised the proposed regulations so as to define the term "structure" by example in the final regulations. We believe that this gives the public adequate notice of the items that are prohibited in Lafayette Park. This revision responds to a suggestion by a commenter, as mentioned above, and to a recent District Court ruling in a criminal case finding that the term "structures" in the current regulations as applied to the White House sidewalk is unconstitutionally vague. *United States v. Snyder*, Cr. Nos. 85–0222 and 85–0306 (D.D.C. Opinion filed Dec. 6, 1985).

The final regulations define the term "structure" by giving examples of categories of items included within the term, *i.e.*, props and displays, furniture and furnishings, shelters, and wagons and carts, and then giving further examples of items included within the categories. The list of categories was compiled from Park Service reports and staff observations of structures that have been used in Lafayette Park and that create the problems discussed extensively above. For example, desks and chairs have been used extensively in the Park, creating several outdoor office spaces. Various shelters have been created, offtimes out of large signs, in which persons have been found sleeping. Props and displays have included such items as a toilet, chests, doors, and primitive buildings of unsafe construction. Carts have been filled with trash and left in the Park as symbolic structures. These types of items, especially when stationary in the Park, have caused physical damage to the Park as well as substantially diminishing its aesthetic quality, while communicating little. Because it is not possible to list every structure that might cause damage in Lafayette Park, a "catch-all" phrase is added to the examples to include "all other similar types of property which might tend to harm park resources including aesthetic interests."

The final regulations make it clear that certain items are not included within the definition of the term "structure". So as to avoid any possible misunderstanding, the final regulations exempt signs from the definition. Likewise, the National Park Service wants to make it clear that wheelchairs and other devices for the handicapped in use by handicapped persons will not be considered to be structures. Finally, the Park Service notes that bicycles and baby carriages and strollers temporarily placed in or being moved across the Park are not included within the definition of the term "structure" as long as these items are attended (defined as an individual being within three feet of the bicycle, baby carriage, or stroller). It has been the experience of park personnel that these items are generally in the Park for only brief periods of time and do not cause the harm to aesthetics, resources and public safety that are caused by the structures mentioned above.

The National Park Service does not believe that the addition of this definition by example changes the substance of the proposed regulations. The additional provision merely clarifies the prohibition contained in the proposed rule, and adds certain practical exceptions, so that the public is given clear notice of what is and what is not allowed.

3. Conclusion.

The National Park Service believes that the final regulatory restrictions, taken as a whole, accomplish the purpose of restoring Lafayette Park as a historic site and formal garden while still allowing ample avenues of communication for those who wish to demonstrate in the Park or elsewhere in the vicinity of the White House. The Park Service believes that it has a responsibility to maintain a high level of aesthetic quality in the parks under its administration, consistent with its duty to allow citizens an opportunity to express their First Amendment rights. Further, the Park Service would be remiss in its responsibilities to all citizens if it did nothing to curb

increasing resource damage or if it ignored safety concerns. Moreover, the National Park Service believes that there is clear legal authority for promulgation of these regulations as they are content-neutral, leave open ample alternative avenues of communication, and are narrowly tailored to meet legitimate government interests. The substantial government interest in safety, resource protection and aesthetics has been affirmed repeatedly by the courts. In fact, the Supreme Court has recognized aesthetics as a substantial government interest in at least two cases decided within the past two years.

It is not easy to draw the lines established in the final rule. For this reason, the National Park Service wishes to express its appreciation to the many individuals and groups who took the time to contribute their comments and suggestions on the proper management of the national parks.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, U.S. Department of the Interior.

Paperwork Reduction Act

The information requirements contained in § 50.19 of Part 50 have been cleared by the Office of Management and Budget for approval under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1024–0021.

Compliance with Other Laws

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service also has determined that the rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The rule merely places reasonable limitations on the use of structures and signs in Lafayette Park. The rule will have no significant impact on any aspect of the economy.

The National Park Service has further determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, 12 U.S.C. 4332, *et seq.*

List of Subjects in 36 CFR Part 50

District of Columbia, National parks, National Capital parks.

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, 36 CFR Part 50 is amended as follows:

1. The authority citation for Part 50 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); (D.C. Code 8–137 (1981) and D.C. Code § 40–721 (1981).

2. Section 50.19 is amended by redesignating paragraphs (e) (11) through (14) as (e) (12) through (15) and adding a new paragraph (e)(11) to read as follows:

§ 50.19 Demonstrations and special events.

* * * * *

(e) * * *

(11) The following are prohibited in Lafayette Park:

(i) The erection, placement or use of structures of any kind except for the following:

(A) Structures that are being hand-carried are allowed.

(B) When one hundred (100) or more persons are participating in a demonstration in the Park, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (b) of this section.

(C) When less than one hundred (100) persons are participating in a demonstration in the Park, a temporary "soapbox" speaker's platform is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* the speaker's platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (b) of this section.

(D) For the purpose of this section, the term "structure" includes props and displays, such as coffins, crates, crosses, theaters, cages, and statues; furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns; shelters, such as tents, boxes and other enclosures; wagons and carts; and all other similar types of property which might tend to harm park resources including aesthetic interests. *Provided however* that the term "structure" does not include signs; bicycles, baby carriages and baby strollers lawfully in the Park that are temporarily placed in, or are being moved across, the Park, and that are attended at all times while in the Park (the term "attended" is defined as an individual being within three (3) feet of his or her bicycle, baby carriage or baby stroller); and wheelchairs and other devices for the handicapped in use by handicapped persons.

(ii) The use of signs except for the following:

(A) Hand-carried signs are allowed regardless of size.

(B) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter (¼) inch in thickness (exclusive of braces that are reasonably required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, *provided that* no individual may have more than two (2) such signs in the Park at any one time, and *provided further that* such signs must be attended at all times (the term "attended" is defined as an individual being within three (3) feet of his or her sign(s)), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-foot by four-foot signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or otherwise placed together so as to form an enclosure of two or more sides, etc.

Dated: February 27, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–4693 Filed 3–4–86; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3243/R812; FRL 2976–7]

Pesticide Tolerance Exemption for Whole Egg Solids

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of whole egg solids when used as an animal repellent in or on the raw agricultural commodity almonds. This regulation, to eliminate the need to establish a maximum permissible level for residues of whole egg solids in or on almonds, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on March 5, 1986.

ADDRESS: Written objections, identified by the document control number PP 5E3243/R812], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of January 8, 1986 (51 FR 765), that announced that IR-4, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3243 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of California proposing the establishment of an exemption from the requirement of a tolerance for whole egg solids when used as an animal repellent in or on the raw agricultural commodity almonds.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance would protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 19, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1071 is added to read as follows:

§ 180.1071 Egg solids (whole); exemption from the requirement of a tolerance.

Whole egg solids (of at least feed grade quality) are exempted from the requirement of a tolerance for residues when used as an animal repellent in or on almonds and applied to the growing crop in accordance with good agricultural practices.

[FR Doc. 86-4486 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3086/R782; FRL-2976-6]

Pesticide Tolerance for Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide fenarimol in or on the raw agricultural commodity pecans. This regulation to establish a maximum permissible level of residues of fenarimol in pecans was requested, pursuant to a petition, by Elanco Products Co.

EFFECTIVE DATE: Effective on March 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4F3086/R782], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of June 6, 1984 (49 FR 23444), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285 filed pesticide petition 4F3086 proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on pecans at 0.1 part per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include:

1. A 90-day dog feeding study with no-observed-effect level (NOEL) of 20 milligrams per kilogram (mg/kg) bodyweight per day (bw/day).

2. A 2-year chronic feeding/oncogenic study in rats with a NOEL of 1.25 mg/kg bw/day for the systemic effect atrophy of the thymus. The compound demonstrated an oncogenic effect of significant increase of hepatic adenomas and hyperplastic nodules at 17.5 mg/kg bw/day.

3. A 2-year oncogenicity study in mice that was negative at all doses tested (0, 7, 24.3, and 85.7 mg/kg bw/day).

4. A rabbit teratology study that was negative for teratogenic effects at all doses tested (0, 5, 13, and 35 mg/kg).

5. A rat teratology study that demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 13, and 35 mg/kg).

6. A multigeneration reproduction study in rats that demonstrated irreversible infertility at 0.625 mg/kg bw/day.

7. A multigeneration reproduction study in guinea pigs that was negative for reproduction effects at 35 mg/kg bw/day.

8. An aromatase inhibition study that showed the compound to be a moderately weak inhibitor of aromatase

activity in the stimulated rat ovarian microsomal system.

9. A mouse lymphoma forward mutation assay; a DNA repair synthesis study in rat liver culture systems; Ames test in *salmonella typhimurim* and in *E. coli*; and *in vivo* chromosome aberration in the Chinese hamster. Fenarimol did not demonstrate mutagenic activity in any of these studies.

The adverse reproductive effects (irreversible infertility) in rats are considered species-specific caused by testosterone aromatase inhibition. A NOEL of 35 mg/kg bw/day for reproductive effects was established in the multigeneration reproduction study in the guinea pig.

Data currently lacking is a 1-year feeding study in dogs. This study has been submitted to the Agency and is presently being reviewed and evaluated.

The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 1.25 mg/kg bw/day) and using a 100-fold safety factor is calculated as 0.0125 mg/kg bw/day. The maximum permitted intake (MPI) for a 60-kg person is calculated to be 0.75 mg/day. The theoretical maximum residue contribution (TMRC) from the tolerance is 0.00005 mg/day and utilizes 0.12 percent of the ADI. No previous tolerances have been established for fenarimol. The chemical has demonstrated oncogenic effect in rats, producing a significant increase in hepatic adenomas and hyperplastic nodules at the highest dose tested (17.5 mg/kg bw/day). Based on these results, a theoretical oncogenic risk for dietary exposure from eating pecan meat containing 0.1 ppm of fenarimol residues was calculated to be 7.3×10^{-9}.

The chemical also demonstrated the teratogenic effect of hydronephrosis at 35 mg/kg bw/day in rats. The NOEL, as previously stated, for this effect was 13 mg/kg bw/day. Based on these data, a margin of safety was calculated for a single dietary portion of pecan meat containing 0.1 ppm of fenarimol residues. The margin of safety for teratogenic effects is $>56,000$

The nature of the terminal residues in pecans is adequately understood. No data is available concerning the metabolism in poultry and livestock. However, pecan hulls are not considered feed items for either poultry or livestock. Therefore, 40 CFR 180.6(a)(3) applies to this tolerance. An adequate analytical method, gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of fenarimol.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 18, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.421 is added to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

Tolerances are established for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the following raw agricultural commodities:

Commodities	Parts per million
Pecans	0.1

[FR Doc. 4487 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 468

[OW-FRL-2942-1]

Copper Forming Point Source Category Effluent Limitations Guidelines, Pretreatment, Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is amending 40 CFR Part 468, a regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that form copper and copper alloys ("copper forming regulation"). EPA agreed to propose and take final action on these amendments in a settlement agreement to resolve a lawsuit challenging the final copper forming regulation promulgated by EPA on August 15, 1983 (48 FR 36942). The amendments modify the copper forming regulation as it applies to the forming of beryllium copper.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for the purpose of judicial review at 1:00 p.m. Eastern time on March 19, 1986. This regulation shall become effective April 18, 1986. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Address questions on the final rule to Ms. Janet K. Goodwin, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The record for the final rule will be available for public review not later than April 4, 1986 in the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, DC. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of this notice

I. Legal Authority

The regulation described in this notice is promulgated under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 92–217).

II. Background

On November 12, 1982, EPA proposed a regulation to establish effluent limitations guidelines for existing direct dischargers based on the best practicable control technology currently achievable ("BPT") and the best available technology economically achievable ("BAT"); new source performance standards ("NSPS") for new direct dischargers; and pretreatment standards for existing and new indirect dischargers ("PSES" and "PSNS", respectively) for the copper forming point source category (47 FR 51279.) EPA published final effluent limitations guidelines and standards for the copper forming category on August 15, 1983 (40 CFR Part 468; 48 FR 36942) and technical corrections to the final rule on November 3, 1983 (48 FR 50717). This regulation established one subcategory that applies to all wastewater discharges resulting from the forming of copper and copper alloys. See 40 CFR 468.01. The preamble to the final copper forming effluent limitations guidelines and standards ("copper forming regulation") contains a complete discussion of the development of the regulation.

Following promulgation of the copper forming regulation, Brush Wellman, Inc. ("Brush") and Cerro Copper Products Company together with the Village of Sauget ("Cerro") filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Seventh Circuit (*Cerro Copper Products Company et al.* v. *EPA*, Nos. 83–3053 and 84–1087.) At the request of all parties, the two cases were subsequently deconsolidated since each raised distinctly different issues.

On September 29, 1984, EPA and Brush executed a Settlement Agreement to resolve all issues raised by Brush with respect to the copper forming effluent limitations guidelines and standards. The Agreement applies only to the challenges made by Brush; it does not resolve challenges made by Cerro nor is Cerro a party to the Agreement. All the provisions in the copper forming regulation challenged by Cerro were upheld in *Cerro Copper Products Company* v. *Ruckelshaus* (7th Cir., July 1, 1985).

Brush challenged the copper forming regulation on the grounds that this regulation and single subcategory were not appropriate as applied to its facilities for two related reasons. First, Brush forms beryllium copper alloys that differ from other copper alloys because the beryllium oxide coating formed on the surface of the metal during heat treating is both tenacious and abrasive and must be removed by special treatment before the alloys can be further processed. Second, one facility owned by Brush produces exclusively very high gauge beryllium copper strip and wire products. Brush claims this causes the volume of wastewater and mass of pollutants discharged to vary significantly from other copper forming plants.

Subsequent data and information submitted by Brush which were not available to EPA before promulgation support its contention that beryllium copper forming involves technical considerations not adequately addressed by the single subcategory of the copper forming regulation. In addition, substantial quantities of beryllium will be present in wastewaters from the removal of the beryllium oxide coating which were not taken into account during the copper forming rulemaking.

Because of these differences, EPA concluded that discharges from beryllium copper forming are best handled as a separate subcategory. Accordingly, EPA agreed to propose certain amendments to the copper forming regulation and to take final action on that proposal. Specifically, EPA agreed to propose to exclude the forming of beryllium copper alloys from the existing copper forming regulation and to create a new subcategory in the regulation reserved for effluent limitations guidelines and standards for the forming of beryllium copper alloys. EPA also agreed to propose that the term "beryllium copper" shall mean copper that is alloyed to contain 0.1 percent or more beryllium. Brush in turn agreed that if the provisions of the copper forming amendments were consistent with the Settlement Agreement, it would voluntarily dismiss its petition for review and withdraw its request for a "fundamentally different factors" variance which it also submitted pursuant to 40 CFR Part 125, Subpart D. Brush also agreed not to seek judicial review of any final amendments that are consistent with the Settlement Agreement.

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Seventh Circuit to stay the effectiveness of 40 CFR Part 468 as it applies to discharges from beryllium copper forming pending final action by EPA on the amendments. On November 8, 1984, the court denied the joint motion. EPA and Brush subsequently filed a joint motion to reconsider the denial. The court granted the motion and entered the stay described above on March 5, 1985. Therefore, 40 CFR Part 468, Subpart A, currently does not apply to discharges from beryllium copper forming. Copies of the Settlement Agreement and the court's stay have been sent to EPA Regional Offices and State NPDES Permit issuing authorities.

III. Amendments to the Copper Forming Regulation

In accordance with the Settlement Agreement, on June 24, 1985, EPA proposed to exclude the forming of beryllium copper alloys from the existing copper forming regulation and to create a new subcategory in the regulation reserved for effluent limitations guidelines and standards for the forming of beryllium copper alloys. EPA also proposed to define "beryllium copper alloy" as specified in the Settlement Agreement.

EPA received only one comment on the proposal, from Brush Wellman. Brush Wellman supported the proposal to exclude beryllium copper alloys from the copper forming regulation as well as the proposed definition of "beryllium copper alloy." Accordingly, EPA is promulgating the proposed provisions as final amendments to the copper forming regulation.

Below is a detailed explanation of those sections of the copper forming regulation subject to these final amendments. All limitations and standards contained in the final copper forming regulation published on August 15, 1983 which are not specifically listed below are not affected by the amendments.

A. *Section 468.01 Applicability.* EPA is correcting a typographical error

changing the CFR unit from subpart to part.

B. *Section 468.02 Specialized Definitions.* EPA is adding a definition for the term beryllium copper alloy to mean an alloy of copper which is annoyed to contain 0.10 percent beryllium or greater. In the proposal, we explained that this definition would cover all beryllium copper alloys that are manufactured or will be manufactured within the forseeable future. Also, any alloy with beryllium present in this amount is expected to have the unique properties characteristic of all beryllium copper alloys. We used the term "alloyed to contain" to specify that the beryllium must be intentionally added.

C. *Section 468.10 Applicability; description of the copper forming subcategory.* Section 468.10 of the final copper forming rule contains only one subcategory to cover discharges from the forming of all copper and copper alloys. This was based on information available to the Agency at the time of promulgation which indicated that wastewater generated by forming any copper alloy contained similar pollutant constituents in amounts effectively controlled by the same model wastewater pollution control technology. Accordingly, EPA established a single subcategory in the copper forming effluent limitations guidelines and standards.

After promulgation, Brush submitted information indicating that copper alloys containing beryllium have unique properties requiring different forming techinques than the forming of other copper alloys. These differences are discussed in the preceding section of this preamble. Because of these differences, the Agency is excluding beryllium copper forming from the existing regulation and creating a new subcategory reserved for effluent limitations guidelines and standards for all beryllium copper alloys. The Agency made this change by adding "except beryllium copper alloys" at the end of § 468.10, Applicability of Subpart A.

The final copper forming regulation includes beryllium copper alloys in the copper forming subcategory. EPA is establishing a new Subpart B reserved for a separate subcategory for beryllium copper forming to account for significant process differences from the forming of other copper alloys. The Agency has already begun gathering data relative to beryllium copper forming and expects to proposed limitations and standards for this subcategory in the near future.

The unique physical properties of beryllium copper alloys, which cause unique forming problems, also apply to other metal alloys containing significant quantities of beryllium and pure beryllium metal. Therefore, the Agency may decide to combine the forming of all alloys that are alloyed to contain beryllium at 0.1 percent or greater under one subcategory. Brush Wellman, in its comments on both the notice of new data for the nonferrous metals forming category and the proposal to amend the copper forming regulation (50 FR 26128, June 24, 1985), objected to this suggestion. EPA is reserving judgment on the appropriate categorization of beryllium and beryllium alloys, including beryllium copper, until it gathers additional data and proposes effluent limitations guidelines and standards for beryllium copper.

IV. Environmental Impact of the Amendments to the Copper Forming Regulation

These amendments will not increase the discharge of pollutants generated by copper forming plants which continue to be covered by the copper forming requirements of Subpart A. EPA estimates that five to nine plants are affected by today's final amendments. Until beryllium copper forming effluent limitations guidelines and standards are established, these plants will be regulated on a case-by-case basis. The Agency does not expect a significant increase of pollutants discharged.

V. Economic Impact of the Amendments

The amendments will not alter the recommended technologies for complying with the copper forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 48 FR 36948). These amendments will not alter the determinations with respect to the economic impact to copper forming plants other than beryllium copper forming and since these amendments do not establish any effluent requirements, they should have no impact on beryllium copper forming plants.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This regulation, like the copper regulation promulgated August 15, 1983, is not major because it does not fall within the criteria for major regulations established in Executive Order 12291.

VII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 15, 1983 final copper forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (48 FR 36950). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, since the amendments would not alter the economic impact of the regulation. The agency did not, therefore, prepare a formal analysis for this regulation.

VIII. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

List of Subjects in 40 CFR Part 468

Copper forming, Water pollution control, Waste treatment and disposal.

Dated: February 24, 1986.

Lee M. Thomas,

Administrator.

For the reasons state above, EPA is amending 40 CFR Part 468 as follows:

PART 468—COPPER FORMING POINT SOURCE CATEGORY

1. The authority citation for Part 468 continues to read as follows:

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 468.01 is amended by revising paragraph (a) to read as follows:

§ 468.01 Applicability.

(a) The provisions of this part are applicable to discharges resulting from the manufacture of formed copper and copper alloy products. The forming operations covered are hot rolling, cold rolling, drawing, extrusion, and forging.

The casting of copper and copper alloys is not controlled by this part. (See 40 CFR Part 451.)

* * * * *

3. Section 468.02 is amended by adding a new paragraph (y) to read as follows:

§ 468.02 Specialized Definitions.

* * * * *

(y) The term "beryllium copper alloy" shall mean any copper alloy that is alloyed to contain 0.10 percent or greater beryllium.

4. Section 468.10 is revised to read as follows:

§ 468.10 Applicability; description of the copper forming subcatgory.

This subpart applies to discharges of pollutants to waters of the United States, and introduction of pollutants into publicly owned treatment works from the forming of copper and copper alloys except beryllium copper alloys.

5. Part 468 is amended by adding a new subpart (B) as follows:

Subpart B—Beryllium Copper Forming Subcategory

§ 468.20 Applicability; description of the beryllium coppr forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introduction of pollutants into publicly owned treatment works from the forming of beryllium copper alloys.

[FR Doc. 4752 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amdt. E-259]

Procurement Sources and Programs; Dollar Thresholds, for Billing Adjustments

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation deletes the $25 threshold for billing adjustments prescribed in the FPMR and replaces it with a reference to the current thresholds in the GSA Handbook, Discrepancies or Deficiencies in GSA or DoD Shipments, Material, or Billings (FPMR 101-26.8). This will update and simplfy the FPMR coverage on dollar thresholds for billing adjustments.

FOR FURTHER INFORMATION CONTACT: Gary L. Hood, Deputy Director, Inventory and Requisition Management Division (703-557-8570).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-26

Government property management.

1. The authority citation for Part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 101-26.803-2 is revised to read as follows:

§ 101-26.803-2 Adjustments.

GSA and DoD will adjust billings whenever the difference involved, resulting from over or under charges or discrepancies or deficiencies in shipments or material, meets the dollar value requirement prescribed in the GSA Handbook, Discrepancies or Deficiencies in GSA or DoD Shipments, Material, or Billings (FPMR 101-26.8).

Dated: February 19, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-4745 Filed 3-4-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25, 28 and 29

Easements, Clarification of Jurisdiction; National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule revises portions of 50 CFR Subchapter C to clarify the applicability of U.S. Fish and Wildlife Service (Service) regulations in easement areas. These revisions clarify misinterpretations that have arisen concerning the application of certain Service regulations to areas of the National Wildlife Refuge System that were acquired in less than fee title through easement and are administered by the Service. The rule adds and defines the terms "easement" and "coordination area," and redefines "national wildlife refuge" and "wildlife management area." It also states the requirement for special use permits for certain types of activities in easement areas, and the regional directors' authority to issue those permits.

EFFECTIVE DATE: April 4, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Chief, Division of Refuge Management, Room 2343 Interior, U.S. Fish and Wildlife Service, Washington, DC 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: Subchapter C, 50 CFR Parts 25 through 29 contain the administrative, public use and land use management provisions for the National Wildlife Refuge System (NWRS). The purposes of those regulations are to, among other things, regulate general administration of various units of the NWRS and provide for issuing permits for activities otherwise prohibited on such units. The National Wildlife Refuge System Administration Act (NRSAA), 16 U.S.C. 668dd et seq., defines these units as including land, water and interests therein which are administered as national wildlife refuges, endangered or threatened species habitat, wildlife ranges, game ranges, wildlife management areas and waterfowl production areas. Consistent with this defintion in the NWRSAA, regulations in Subchapter C define the NWRS as including any Service interest in land and water, including less than fee simple interests such as wetland easements. Application of this definition has been misconstrued by some to mean that all of the general regulations for the NWRS in subchapter C are applicable to areas acquired by the Service through easement agreement. This makes the regulations subject to an overly expansive interpretation. It was not the original intent of the rules, nor does it accurately reflect how the rules have been either interpreted or administered by the Service. Rather, the Service has always considered only some of the regulations as applicable to NWRS easement areas, given the limited property interest the Service acquires in those areas. In order to clarify which regulations do or do not apply to less than fee areas, the Service decided to issue a revised set of regulations on this subject.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On April 25, 1984, the proposed rule to clarify applicability of Service regulations in easement areas was published in the **Federal Register** (49 FR 17778), with a 30-day comment period. Written comments were received and are considered in the following section.

Responses to Comments

Seven written comments were received in response to the proposed rulemaking. Substantive comments are outlined and responded to below:

Issue 1: One commenter suggested that the reference to game commissions in § 25.12(a)(5) be changed to "state fish and wildlife agency."

Response: That suggested change has been made.

Issue 2: One commenter suggested that the definition of coordination area [§ 25.12(a)(6)] be clarified to include the fact that those areas are a part of the NWRS.

Reponse: The recommendation has been accepted and the definition has been clarified.

Issue 3: One commenter recommended that mitigation measures be required if mitigation is necessary to make the proposed use compatible with the purposes for which the easement was acquired.

Response: That suggested change has been made.

Issue 4: One commenter suggested that § 25.12(a)(3) of the proposed rule "be modified to specifically state that the regulations only apply to the wetland area identified in the easement summary."

Response: This comment applies only to waterfowl production areas (WPA). Easement summaries are working papers used by the Service in negotiating with landowners for purchase of prairie pothole easements. These summaries are not part of the contract. The easement contract between the Service and the seller covers all wetland areas described in that contract, and delineated on a map attached to the contract. The contract applies to currently existing wetlands as well to as those subject to recurrence through natural or man-made causes, and to any enlargements of the wetland areas resulting from normal or abnormal increased water.

Further, the regulations are intended to apply to easements other than prairie pothole easements. The Service administers many such areas and a reference to wetland acres in easement summaries would be meaningless for those types of easements. The definition of easement in the regulations applies equally to wetland (prairie pothole) easements and all other types of easements. The actual scope of any easement is, of course, governed by the document creating it (see Issue 18 Response).

Issue 5: One commenter suggested that the second sentence of proposed § 25.44(a) be modified to delete the word "indirectly" and thus state, "Provisions of Subchapter C shall apply to activities within easement areas only to the extent that the provisions of Subchapter C are directly related to the easement interests acquired by the United States and are consistent with provisions of this subsection."

Response: Whether the regulations in Subchapter C can apply either directly or indirectly to the easement interest acquired by the Service is dependent upon the provisions of an individual easement agreement. For example, in the usual agreement executed to convey easements for waterfowl management rights, the provisions related to drainage state that the easements will be maintained as a waterfowl production area "by not draining, causing or permitting the draining by construction of ditches, or by any means, *direct or indirect*," (emphasis added). This is an example of how the Service's authority may extend beyond the regulation of direct effects. The commenter's suggested change, therefore, is unduly narrow and has not been adopted.

Issue 6: One commenter noted that requiring an owner's agreement for third party activities could effectively preclude the use of condemnation by a governmental entity at the state of local level.

Response: Proposed § 25.44(b) does not expressly prohibit a governmental entity from condemning a servient estate subject to a Service easement; rather, it requires that once the property is condemned, the governmental entity must then obtain a permit from the Service for uses which may directly or indirectly affect the Service s easement interests. We agree, however, that in instances where only a partial interest in the servient estate is condemned, the proposed requirement of the servient estate owner's consent could conceivably preclude the local or state government's *use* of the condemned interest. For example, the servient estate owner could conceivably refuse to agree to the local government's proposed activity even though the use was consistent with the partial property interest obtained through condemnation. To prevent potential problems, a new section is added as § 25.44(c) of the final rule to allow issuance of special use permits without the owner's agreement in cases of condemnation of partial interest in the servient estate, if it is determined that such use is compatible with the purposes for which the Service's easement interest was acquired and is consistent with the partial property interest obtained through condemnation.

Issue 7: One commenter expressed the need for clarity as to how these regulations apply to areas held in less than fee, such as, but not limited to easements.

Response: The regulations apply only to the extent that the property interest held by the United States may be affected. Those provisions of the NWRS general regulations relating to the control of "social conduct" like drinking or gambling were but examples of regulations that do not apply to easement areas since they are unrelated to the protection of the Service s limited property interest.

Issue 8: One commenter recommended that the limited interest agreement between the Service and the landowner be clearly set forth in the proposed change.

Response: The Service feels that the last sentence of § 25.11(a) clearly expresses the fact that the Service recognizes it acquires a limited interest, and that application of regulations on areas held in less than fee extends only to the extent specific property interests are acquired.

Issue 9: One commenter objected to retaining the procedure in § 29.21 for permits for rights-of-way across easement areas. It was felt that it could be difficult for applicants to determine which procedure to follow as the difference between rights-of-way and activities affecting easement areas may sometimes be unclear.

Response: The Service does not see this potential difficulty as a real problem. In the majority of instances, it will be clear whether or not a proposed use is of the type traditionally considered a right-of-way. It is obvious that uses such as railways, roads and pipelines fall within the right-of-way category, thereby requiring a permit under § 29.21. In the few instances, however, where it might be unclear whether a proposed use requires a permit under §§ 29.21 or 25.44, the applicant may simply submit a written application to the regional director who can then determine which procedure to follow. Both sections require that written applications be submitted to the regional director. Upon receipt of an application, if the regional director

determines that the wrong procedures are being followed, he or she will inform the applicant of the appropriate procedure.

Issue 10: One commenter objected that the current procedure in 50 CFR 25.44 does not contain all of the same regulatory provisions and requirements currently found in § 29.21 (rights-of-way). They gave the example that § 25.44 does not require a map and a "detailed environmental analysis" of the impact of the proposed use.

Response: The Service disagrees that these requirements must be specifically provided for in § 25.44. Rights-of-way permits, unlike most potential permitted uses under § 25.44, generally entail long-term encumbrances on the land with potentially significant impacts. Thus, granting a right-of-way for a pipeline is likely to produce considerably more impacts than those created by a more limited and temporary form of special use. A more detailed analysis and procedure are justified for rights-of-way. Furthermore, the procedure in § 25.44 does not peclude the regional director from requesting additional information when deemed necessary for proposed special uses with the potential for greater impacts.

Issue 11: One commenter requested that the procedure in § 25.44 include a provision for public participation in the permitting process.

Response: The Service does not believe such a provision for easement areas is required, and it would be extremely burdensome to implement. For instance, public participation normally is not utilized when issuing permits to allow the use of refuge lands owned in fee. Moreover, the expense and delays in agency decisionmaking associated with such a proposal would be considerable. The Service, therefore, declines to adopt this suggestion.

Issue 12: Two commenters requested that both "wildlife management areas" and "coordination areas" be defined to avoid confusion of these terms.

Response: The Service agrees with this recommendation and both definitions are in the final rule.

Issue 13: One commenter contended that activities not affecting the proprietary interests of the Service should automatically be permitted.

Response: As a matter of law, the Service evaluates activities on a case-by-case basis to determine the potential of various uses for affecting the interest acquired by the Service. The NWRSAA authorizes the Secretary to permit the use of any area within the NWRS whenever he determines that such uses are compatible with the major purposes for which such areas were established (16 U.S.C. 668dd(d)(1)). Section 25.44(b) has been revised to indicate that the regional director will issue a letter of non-objection if the requested use will not affect the Service interest. However, the right to make such a determination is retained by the Service.

Issue 14: One commenter suggested that the proposed procedure in § 25.44(b) for granting special use permits be changed to allow permitting to "be accomplished by rule rather than a hard and fast permitting procedure."

Response: The Service had difficulty interpreting the intent of the comment, and the commenter provided no explanation or justification for the suggestion.

The Service interprets the suggestion to be that it should issue special rules listing certain categories of activities that could be conducted without individual permits. As stated above in issue 13, as a matter of law under the NWRSAA, the Service must evaluate activities which may affect easement interests on an individual basis. A wide range of activities may require evaluation under § 25.44(b), and it is difficult to anticipate in advance what those activities and their effects might be on the Service's various easement interests. Therefore, it is more effective for the Service to make compatibility determinations on a case-by-case basis rather than generically through formal rulemaking.

Issue 15: One commenter suggested that mitigation be shown to be cost-effective.

Response: Section 25.44(c) allows the Service to require mitigation when necessary to make a permitted use compatible with the purposes for which the easement was acquired. The Service notes that Congress has limited the activities that may be carried out in areas of the NWRS. The NWRSAA requires that permitted uses of areas of the NWRS be compatible with the purposes for which the areas were established. Mitigation is allowed under § 25.44(c) solely for the purpose of conforming proposed activities to this compatibility requirement. The mitigation measures necessary to make a permitted use compatible may or may not be cost-effective; the NWRSAA does not authorize the Service to consider costs as a factor in making determinations of what mitigation measures are needed to satisfy the compatibility requirement.

Issue 16: One commenter requested that definitions for each of the five types of management areas listed in the NWRSAA be given in this rule.

Response: Definitions contained in § 25.12 are those essential to interpretation of the regulations. Clarification of the definition of "coordination area" and definition of the general term "wildlife management area" have been provided in the final rule. For the purpose of this rule, additional definitions are unnecessary.

Issue 17: One commenter recommended deleting the phrase "other special authorities" in the proposed definition of coordination area [§ 25.12(a)(6)].

Response: The Service concurs and has deleted the phrase.

Issue 18: One commenter requested that the easement definition and discussion concerning easements be restricted to waterfowl production areas (WPA) only.

Response: By definition an easement means a less than fee interest in land or water. Those easements acquired by the Service are generally administered for the purpose of maintaining fish and wildlife habitat. These easements may be acquired under a variety of statutory authorities in order to protect a variety of wildlife needs such as waterfowl migration and wintering habitat, endangered species habitat and other important fish and wildlife habitat, as well as the better known waterfowl production areas. Since all of these various easements become part of the NWRS, and are therefore subject to the provisions of the general Refuge System regulations, the term easement cannot be restricted to WPA easements alone.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (16 U.S.C. 668dd(a)(1)) authorizes the Secretary of the Interior to administer various categories of areas for the conservation of fish and wildlife through the Fish and Wildlife Service. The areas are defined by the Act to include, "all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas," and designates these areas as part of the NWRS. Activities affecting the Federal Government's interests in these areas are subject to the provisions of the act related to prohibited and permitted activities (668dd(c)) and use of these areas (668dd(d)), as well as to such regulations as may be prescribed.

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires each

information collection requirement to display an Office of Management and Budget (OMB) clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is voluntary, mandatory, or required to obtain a benefit. The information collection requirements of refuge regulations are presently approved under OMB approval number 1018–0014. These regulations impose no new reporting or recordkeeping requirements. The special use permits and related information collection requirements in present rules will continue to apply to limited activities on easement area. The information collection is necessary for the regional director to issue permits and a response is required to obtain permitted benefits.

Environmental Effects

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76–59) was filed on November 12, 1976. In accordance with Appendix 1 section 516 of the Departmental Manual, dated September 28, 1982 (published at 47 FR 28841), these regulations do not involve a change in the level or types of use previously permitted by the Service, but merely clarify what the Service's historic policy has been through the amendment of certain ambiguous provisions of the general refuge regulations. These regulations are therefore, categorically excluded from further compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organization or governmental jurisdictions.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. This rule is primarily a clarification of existing regulations. There will be a minor positive economic effect because it should eliminate costs associated with the occasional litigation resulting from confusion over Service jurisdiction and authority in easement areas. The costs to the Service in developing and implementing this amendment, as well as the administrative costs associated with issuance of permits, are not expected to exceed $25,000. There will be no additional enforcement cost placed on the Federal government or the states. Because this rulemaking would not change on-the-ground enforcement or any significant amount of permit activity, there will be little, if any, effect on employment and investment. This regulation will have no effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Revision of 50 CFR Subchapter C will clarify the Service's authority on easements and it is anticipated to have no economic effect on small entities. For the most part, the rule addresses administrative matters associated with the management of refuge programs and will have no new economic effect on landowners with easements.

The primary author of this rulemaking is Noreen Clough, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, National Wildlife Refuge System, Safety, Wildlife refuges.

50 CFR Part 28

Law enforcement, National Wildlife Refuge System, Penalties, Seizures and forfeitures, Wildlife refuges.

50 CFR Part 29

National Wildlife Refuge System, Public lands-mineral resuorces, Public lands-rights-of-way, Wildlife refuges.

For the reasons set out in the preamble, Parts 25, 28 and 29, Subchapter C, Chapter 1 of Title 50, Code of Federal Regulations, are amended as set forth below.

PART 25—[AMENDED]

1. The authority citation for Part 25 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, 45 Stat. 449 (16 U.S.C. 690d); Sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); Sec. 4, 48 Stat. 402 as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); Sec. 476 Stat. 654 (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd).

2. 50 CFR 25.11(a) is revised to read as follows:

Subpart A—Introduction

§ 25.11 Purpose of regulations.

(a) The regulations in this subchapter govern general administration of national wildlife refuges, public notice of changes in U.S. Fish and Wildlife Service policy regarding refuges, issuance of permits required on refuges, and other administrative aspects involving the management of various units of the National Wildlife Refuge System. These regulations apply to areas of land and water held by the United States in fee title and to property interests in such land and water in less than fee, inlcuding but not limited to easements. For areas held in less than fee, these regulations apply only to the extent that the property interest held by the United States may be affected.

* * * * *

§ 25.12 [Amended]

3. In 50 CFR 25.12 (a) is amended by alphabetizing the definitions; adding the definition for "Coordination area" and "Easement"; and revising the definition for "National wildlife refuge" and "Wildlife management area" as follows:

(a) * * *

* * * * *

"Coordination area" means a wildlife manegement area that has been withdrawn from the public domain or acquired by the Federal Government and subsequently made available to a State by cooperative agreement between the U.S. Fish and Wildlife Service and the State fish and wildlife agency pursuant to the Act of March 10, 1934 (16 U.S.C. 661–666c: 48 Stat. 401), as amended; or by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended. Coordination areas are managed by the States but are a part of the National Wildlife Refuge System.

"Easement" means a less than fee interest in land or water acquired and administered by the U.S. Fish and Wildlife Service for the purpose of maintaining fish and wildlife habitat.

* * * * *

"National wildlife refuge" means any area of the National Wildlife Refuge System, except coordination areas.

* * * * *

"Wildlife management area" means a general term used in describing a variety of areas that are managed for wildlife purposes which may be included in the National Wildlife Refuge System.

(b) * * *

4. 50 CFR 25.44 is redesignated as "§ 25.45 Appeals Procedure" and a new § 25.44 is added as follows:

§ 25.44 Easement area permits.

(a) The provisions of this subsection shall govern the regulation of activities that affect easement interests acquired by the United States. All other provisions of Subchapter C shall apply to activities within such easement areas, but only to the extent that those provisions are directly or indirectly related to the protection of those easement interests expressly acquired by the United States which are specified in the easement agreement itself, and are not inconsistent with the provisions of this subsection.

(b) Permits for use of easement areas administered by the Service are required where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the regional director or a designee. Special use permits may be granted to owners of servient estates, or to third parties with the owner's agreement, by the regional director or a designee, upon written determination that such permitted use is compatible with the purposes for which the easement was acquired. If it is ultimately determined that the requested use will not affect the United States' interest, the regional director will issue a letter of non-objection.

(c) In instances where the third applicant is a governmental entity which has acquired a partial interest in the servient estate by subsequent condemnation, a special use permit may be granted to the governmental entity without the servient estate owner's agreement if the regional director or his or her designee determines:

(1) The permitted use is compatible with the purpose for which the Service's easement was acquired; and

(2) The permitted use is consistent with the partial property interests obtained through condemnation.

(d) The regional director or designee may require mitigation measures, as determined appropriate, within the easement area, in order to make the proposed use compatible with the purposes for which the easement was acquired. Such mitigation measures are solely for the purpose of complying with the requirement of the National Wildlife Refuge Administration Act that the use be compatible with the purpose for which the area was established. If the proposed use cannot be made compatible through permit stipulations and/or mitigation, the permit will be denied.

(e) Regulations pertaining to rights-of-way in easement areas are contained in 50 CFR Part 29.21.

PART 28—[AMENDED]

5. The authority citation for Part 28 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); sec. 5, 43 Stat. 651 (16 U.S.C. 725); sec. 5, 45 Stat. 449 (16 U.S.C. 690d); sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); sec. 4, 76 Stat. 654 (16 U.S.C. 460k); sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 301).

6. 50 CFR Part 28 is amended by revising the phrase "to protect Service property and facilities" in § 28.21 to read, "to protect Service lands, property, facilities, or interests therein."

PART 29—[AMENDED]

7. The authority citation for Part 29 is revised and the authority citations following all the sections in Part 29 are removed.

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. 50 CFR Part 29 is amended by removing paragraph 29.21(f), and redesignating existing paragraphs 29.21(g), 29.21(h) and 29.21(i) as paragraphs 29.21(f), 29.21(g) and 29.21(h), respectively.

Dated: October 15, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-4125 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 51, No. 43
Wednesday, March 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 3061S]

General Administrative Regulations; Crop Insurance; Debt Management; Delinquent Debts; Credit Reporting Procedures; Collection Procedures

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend 7 CFR Part 400, General Administrative Regulations, by adding a new subpart, Subpart K, Debt Management. This proposed rule sets forth the procedures under which FCIC will refer information with respect to delinquent debts owed to FCIC to credit reporting agencies and to contract collection agencies. These actions, which are usual and customary in commerce, are being taken as an incentive for delinquent debtors to repay debts owed to FCIC. This action is being taken under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments must be received not later than April 4, 1986 to be assured of consideration.

ADDRESS: Written comments should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert Brammer, Comptroller, Federal Crop Insurance Corporation, Room 4652, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–5183.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Enviornmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offers crop insurance to eligible producers in the return for the payment of a premium. The premium is due and payable when insurance attaches at the time of seeding or planting. Premium billing is generally made at the time of harvest and the insured is allowed 30 days in which to pay the premium before interest attaches. While FCIC collects a high percentage of premium, some accounts remain unpaid. Those insureds who do not pay their premium become indebted to FCIC. As an aid in effective debt management FCIC will submit information with respect to these and any other delinquent debts owed to FCIC to credit reporting agencies and collection agencies. This policy is consistent with customary business practices in the private sector, the Federal Claims Collection Standards (FCCS), 4 CFR 102.5, and Office of Management and Budget (OMB) Circular A–129.

The Debt Collection Act of 1982 (Pub. L. 97–365)(Act), amended section 3 of the Federal Claims Collection Act (FCCA)(now codified at 31 U.S.C. 3711(f)) to authorize the head of an agency, in attempts to collect delinquent debts owed by an individual, to disclose information relating to such debt to a consumer reporting agency. The Act also amended the Privacy Act of 1974 (5 U.S.C. 552a(b)) to permit such disclosure of information under certain conditions.

Under the proposed rule, information with respect to delinquent debts will be referred to credit reporting agencies.

In disclosing information with respect to delinquent individual debts, FCIC will follow the due process requirements set forth in the FCCS. In disclosing information with respect to other delinquent debts to credit reporting agencies, FCIC will afford such debtors notice and due process similar to that provided to individuals. Only that information directly related to the indentity of the debtor and the history of the claims will be released. Debtor information will consist of the following: The debtor's name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor; the amount, status and history of the claim, and the crop insurance program under which the claim arose.

Debts owed to FCIC which FCIC is unable to collect by the termination date contained in the crop insurance contract or by the date payment was to have been made or as determined by FCIC, will be referred to a collection agency under contract with the General Services Administration (GSA) in accordance with accepted collection contract procedures.

The public is invited to submit written comments with respect to this proposed rule to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written submissions

received pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday. A comment period of 30 days following the publication of this rule is provided in order to give interested parties time to comment and to make available the early implementation of this policy as an aid to effective debt management.

List of Subjects in 7 CFR Part 400

General administrative regulations, Crop insurance, Debt management, Delinquent debts, Credit reporting procedures, Collection procedures.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (5 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR Part 400, General Administrative Regulations, by adding a new subpart, Subject K, Debt Management, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart K—Debt Management

Sec.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart K—Debt Management

§ 400.115 Purpose.

This subpart sets forth procedures that will be followed, and the rights afforded to debtors, in connection with the reporting by the Federal Corp Insurance Corporation (FCIC) to credit reporting agencies of information with respect to delinquent debts owed to FCIC, and in connection with referral of delinquent debts to contract collection agencies.

§ 400.116 Definitions.

(a) *"Credit reporting agency"* means (1) a consumer reporting agency as defined at 4 CFR 102.5(a), or (2) any entity which has entered into an agreement with FCIC to provide credit reporting services.

(b) *"Collection agency"* means a private debt collection contractor under Federal Supply Schedule contract with the General Services Administration (GSA) for professional debt collection services.

(c) *"Comptroller"* means the employee of FCIC filling that position or the person designated by the Comptroller to perform that function.

(d) *"Debt and claim"* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money, the total amount of which is in excess of $100, which has been determined by an appropriate agency officials to be owed to FCIC by any individual, organization or entity, except another Federal agency; State, local or foreign government or agencies thereof; Indian tribal governments; or other public institutions. The debt or claim may have arisen from overpayment, premium non-payment, interest, penalties, reclamations resulting from payments under good faith reliance provisions, or other causes.

(e) *"Delinquent debt"* means (1) any debt owned to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(f) *"System of records"* mean a group of any records under the control of FCIC from which information is retrieved by the name of the individual by some identifying number, symbol, or other identification assigned to the individual.

(g) *"Request for review"* means that request submitted to FCIC by a debtor for a review of the facts resulting in the determination of indebtedness to FCIC. FCIC allows 45 days for such request and any request submitted within that period is considered a timely request.

§ 400.117 Determination of delinquency.

Prior to disclosing information to a credit reporting agency in accordance with this subpart, the FCIC claims official, designated as the Comptroller, FCIC, or the designee of the Comptroller who has jurisdiction over the claim, shall be responsible for reviewing the claim and determining that the claim is valid and overdue.

§ 400.118 Demand for payment.

The Comptroller responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Manager, FCIC, the Federal Claims Collection Standards at 4 CFR 102.2, or the contract between the General Services Administration (GSA) and the collection agency.

§ 400.119 Notice to debtor, credit reporting agency.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller responsible for disclosure of information with respect to delinquent debts to a credit reporting agency shall send written notice to the debtor informing such debtor:

(1) Of the basis for the indebtedness;

(2) That the payment is overdue;

(3) That FCIC intends to disclose to a credit reporting agency that the debtor is reponsible for the debt and with respect to an individual, that such disclosure shall be made not less than 60 days after notification to such debtor;

(4) Of the specific information intended to be disclosed to the credit reporting agency;

(5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the system of records of FCIC concerning the claim;

(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and

(7) Of the date after which the information will be reported to the credit reporting agency.

(b) The content and standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

§ 400.120 Subsequent disclosure and verification.

(a) FCIC shall promptly notify each credit reporting agency to which the original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payment received, additional amounts due, or offsets made with respect to the debt.

(b) FCIC shall promptly verify or correct, as appropriate, information about the claim on request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

(c) FCIC shall obtain satisfactory assurances from each consumer reporting agency to which information will be privided that the agency is in compliance with the provisions of all laws and regulations of the United States relating to providing consumer credit information.

§ 400.121 Information disclosure limitations.

FCIC shall limit delinquent debt information disclosed to credit reporting agencies to:

(a) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(b) The amount, status, and history of the claim; and

(c) The FCIC program under which the claim arose.

§ 400.122 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, FCIC shall take reasonable action to locate a debtor for whom FCIC does not have a current address in order to send the notification in accordance with § 400.119 of this subpart.

§ 400.123 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, FCIC shall, upon request of the debtor, provide for a review of the claim, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable administrative appeal procedures.

(b) Upon receipt of a timely request for review, FCIC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on there quest.

(c) Upon completion of the review, the reviewing office shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from the provided in the initial notification.

§ 400.124 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller or designated manager of the systems of records shall disclose to credit reporting agencies the information specified in § 400.122.

(b) Disclosure of information to credit reporting agencies shall be made on or after the date specified in §§ 400.119(a)(3) and 400.124 and shall be comprised of the information set forth in the initial determination or any modification thereof.

(c) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to repay the debt and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or designee has not issued a decision on the review.

§ 400.125 Notice to debtor, collection agency.

FCIC shall provide 30 days written notice to the debtor, mailed to the debtor's last known address, of FCIC's intent to forward the debt to a collection agency for further collection action.

§ 400.126 Referral of delinquent debts to contract collection agencies.

(a) FCIC shall use the services of a contract collection agency which has entered into a contract with the General Services Administration to recover debts owed to FCIC.

(b) If FCIC's collection efforts have been unsuccessful on a delinquent debt, and the delinquent debt remains unpaid, FCIC may refer the debt to a contract collection agency for collection.

(c) FCIC shall retain the authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation.

Done in Washington, DC, on February 10, 1985.

Edward Hew,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-4719 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a rederendum be conducted among growers and handlers of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland to determine whether they favor continuance of the marketing order under which they operate.

DATES: The referendum period is March 10 through March 20, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 475-3919.

SUPPLEMENTARY INFORMATION: This action is taken under Marketing Order 930 (7 CFR Part 930) regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the act.

The Department is required under § 930.73(d) of the cherry marketing order to conduct a referendum within the month of March every fifth year to ascertain whether continuation is favored by growers and handlers. The last such referendum was held during March 1981. If it develops from the referendum that (1) More than 50 percent of the producers by number of volume of production represented in the referendum, or (2) more than 50 percent of the handlers who during the representative period handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum, favor termination, the Secretary shall give consideration to terminating the marketing order.

The act provides that the Secretary shall terminate an order, whenever he finds that such termination is favored by a majority of producers who, during a representative period, have produced for market more than 50 percent of the volume of the commodity produced for market within the production area, or have produced more than 50 percent of the volume sold in the marketing area (7 U.S.C. 608c (16)(B)). Accordingly, if, in this referendum, termination is favored by the requisite majority, the Secretary shall terminate the marketing order pursuant to section 8c(16)(B) of the act.

It is hereby directed that a referendum be conducted during the period March 10 through March 20, 1986, among growers and handlers who, during the period May 1, 1985, through December

31, 1985 (which period is hereby determined to be a representative period for purposes of this referendum), were engaged, in the States specified above, in the production or processing of cherries for market, to ascertain whether such growers and handlers favor the continuance of the marketing order.

Martha B. Ransom and Raymond C. Martin, III, of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct said referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended." (7 CFR Part 900.400 *et seq.*)

Authority: Agricultural Marketing Agreement Act of 1937, as Amended Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: February 27, 1986.

Karen K. Darling,

Deputy Assistant Secretary Marketing & Inspection Services.

[FR Doc. 86–4726 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1006

Milk in the Upper Florida Marketing Area; Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites written comments on a proposal to terminate (or suspend for 12 months) certain classification provisions of the Upper Florida order. The proposed action would remove the provision "(including milkshake mix)" from the fluid milk product definition. Such action would classify skim milk and butterfat used in milkshake mix as Class II milk. Currently, a Class I classification applies to skim milk and butterfat in such use. Upper Florida Milk Producers Association, the proponent of the proposed action, indicates that the termination order is needed in order for a processing plant regulated under the Upper Florida order to be competitive with certain other Federal order plants in the processing and distribution of a milkshake mix product (Shake Ups). Proponent indicates that the milkshake product contains in excess of 20 percent total solids and would be classified as a Class II product under the Georgia order and a large number of other Federal order markets.

DATE: Comments are due on or before March 20, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968-South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers by reducing the payments that are required to be made for milk used in the processing of milkshake mix.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination or, alternatively, a 12-month suspension of the following provision of the order regulating the handling of milk in the Upper Florida marketing area is being considered:

1. In § 1006.15, the provision "(including milkshake mix)".

All persons who want to send written data, views, or arguments about the proposed termination (or suspension) should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968-South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 15 days after the publication of this notice in the **Federal Register.**

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination (or suspension) would classify as Class II milk all skim milk and butterfat used in the processing of milkshake mix. The order now classifies as Class I milk the skim milk and butterfat in such use.

The proposed termination (or a 12-month suspension) of the provision "(including mildshake mix)" from the fluid milk product definition of the Upper Florida milk marketing order was requested by Upper Florida Milk Producers Association. The cooperative supplies a large portion of the market's fluid milk needs. It also supplies milk to the Flav-O-Rich plant at Jacksonville, Florida, that is processing a milkshake mix product (Shake Ups) containing in excess of 20 percent total solids. The cooperative indicates that a Class II classification is needed for such product in order for the plant to compete with handlers regulated under the Georgia milk order and most other Federal milk orders. Proponent states that skim milk and butterfat in milkshake mix containing in excess of 20 percent total solids are classified as Class II milk in most Federal milk orders while the current provisions of the Upper Florida milk order classify the skim milk and butterfat in such product as Class I milk. Therefore, comments are sought to determine whether the aforementioned provision should be terminated or suspended.

List of Subjects in 7 CFR Part 1006

Dairy products, Milk, Milk marketing order.

The authority citation for CFR Part 1006 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: February 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–4823 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1131 and 1136

Milk in the Central Arizona and Great Basin Marketing Areas; Termination of Proceeding on Proposed Termination of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a proceeding on a proposal to terminate the requirement that handlers regulated under the Central Arizona and Great Basin marketing areas pay more than the previous month's Class III price in making partial payments for milk received during the first 15 days of the month. Termination of the amount of the partial payment rate in excess of the previous month's Class III price was requested by Safeway Stores, Inc., a proprietary handler under both orders. Although the proposed termination was supported in comments received from other handlers regulated under the Great Basin order, strong opposition to such action was expressed on behalf of the producer groups representing a substantial majority of the producers

whose milk is pooled under the two Federal orders.

Because of the conflicting viewpoints expressed by interested parties and the large number of producers opposed to the proposed termination, it is concluded that the requested termination should not be implemented on the basis of this proceeding.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Termination of Certain Provisions of the Orders: Issued January 14, 1986; published January 17, 1986 (51 FR 2506).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

Notice of proposed rulemaking was published in the **Federal Register** (51 FR 2506) concerning a proposed termination of certain provisions of the Central Arizona and Great Basin milk orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon by February 3, 1986.

Statement of Consideration

The proposed termination would have eliminated the portion of the partial payment rate handlers must pay for milk received from producers during the first 15 days of the month that exceeds the previous month's Class III price.

The Central Arizona order provides that handlers must pay producers or their cooperative 1.3 times the Class III price for the preceding month for milk received the first 15 days of the month. A partial payment under this order is not required for milk of producers who have discontinued shipping milk before the 25th day of the month. With respect to milk received from a cooperative association in its capacity as a bulk tank handler or as the operator of a pool plant, the order requires a partial payment at the above rate for all milk received the first 15 days of the month.

Similarly, the Great Basin order requires that handlers pay more than the previous month's Class III price for all milk received during the first 15 days of the month from any producer. The partial payment rate under the Great Basin order is 1.2 times the Class III price for the preceding month. The Great Basin order also requires partial payments to a cooperative association in its capacity as a bulk tank handler and as the operator of a pool plant.

Safeway Stores, Inc., proposed that the 1.3 and 1.2 factors be terminated. Such an action would have resulted in producers and cooperatives being paid the Class III price of the previous month for milk delivered during the first 15 days of the month. The partial payment so computed would have been due to producers and to cooperative associations on or before the end of the month in which the milk was delivered, as is provided by the provisions currently in the orders.

Safeway indicated that at the present time, the price relationship between the Class I price and the preceding month's Class III price is such that partial payments at either the 1.3 or 1.2 rate times the preceding month's Class III price result in handlers having to pay producers more than the Class I price. Safeway indicated, for example, that for the month of October 1985 under the Central Arizona order, the minimum Federal order partial payment rate was $14.46 (Class III price for September $11.12 × 1.3), or $.86 more than the $13.60 Class I price. Under the Great Basin order, for the same month, the minimum partial payment rate was $13.34 (Class II price for September $11.12 × 1.2) or $.36 more than the Class I price of $12.98. Under both orders, the differences between the partial payment rate and the uniform price would be even larger than the differences between the partial payment rate and the Class I price.

At the time the current partial payment rates were promulgated (Central Arizona—final decision issued January 19, 1961; Great Basin—final decision issued March 29, 1961) it was determined that in both markets the rate for partial payments would not result in any "overpayments". This was determined because at that time the proportion of the Class I price and, consequently, of the uniform price to producers represented by the Class III price was substantially smaller than in recent months. Under current market conditions, the orders require a partial payment at a price that exceeds the final minimum order pay price, including the Class I price for milk received from a cooperative association and for which payment is required at not less than class prices.

Aside from Safeway's initial proposal to terminate the 1.3 factor used to establish the partial payment rate under the Central Arizona order, there was no support for the proposed termination from other persons affected by the Central Arizona order. There was, however, strong opposition to the proposal from a nonmember producer and on behalf of United Dairymen of Arizona (UDA), a cooperative association representing nearly all of the producers pooled under the Central Arizona order. The comments on behalf of UDA stressed repeatedly that such an action should be taken only after a public hearing at which all parties would have an opportunity to introduce evidence and voice opinions.

The proposed termination was supported by two handlers, in addition to Safeway, regulated under the Great Basin order, and by the operator of three nonpool plants receiving milk from producers whose milk is eligible for fluid use at Great Basin pool plants. The handlers supported termination action on the basis that the partial payment rate currently exceeds the Class I price, and thus constitutes an overpayment to producers for milk delivered during the first 15 days of the month.

Comments opposing the proposed termination were filed on behalf of Intermountain Milk Producers Association (IMPA), a federation of cooperatives whose members represent a large majority of the producers whose milk is pooled under the Great Basin Federal milk order. Like the comments filed on behalf of Central Arizona producers, those submitted by IMPA argued that dairy farmers already wait for most of the remainder of the month to be paid for the milk they market during the first 15 days of the month. Further, the commenters stated, by the time producers are paid for the milk they deliver during the first half of the month, handlers have already received another 15 or 16 days' production (10 days' production, under the Central Arizona order). According to the comments received from producers, reduction of the partial payment rate would represent an unwarranted additional extension of credit to handlers at the expense of producers.

A hearing is scheduled to begin on March 18, 1986, in Salt Lake City to receive testimony and evidence relating to a proposal to merge the Great Basin and Lake Mead orders. One of the proposals contained in the hearing notice would establish the rate of partial payment under the proposed merged order, or would amend the partial payment rate under the current Great Basin order, at the level of the Class III price for the previous month. No proposals to amend the partial payment provisions of the Central Arizona order have been received.

In view of the conflicting viewpoints expressed by interested persons and the large number of producers opposed to

the proposed termination, it is concluded that the requested termination should be based on the record of a public hearing rather than implemented on the basis of this proceeding. Accordingly, the proceeding begun in this matter on January 14, 1986, is hereby terminated.

List of Subjects in 7 CFR Parts 1131 and 1136

Dairy products, Milk, Milk marketing orders.

The authority citation for CFR Parts 1131 and 1136 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC on: February 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–4822 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through July 1986 a suspension of portions of the Eastern Colorado Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continuation of the suspension of the provision was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due on or before March 12, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Room 2968, South Building; U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: The Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the months of March through July 1986.

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would continue to relax for the months of March through July 1986 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that three deliveries of each producer's milk be received at a pool distribution plant each month.

The order now provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distribution plants in the months of March, April, May, June, July and December, and 20 percent in other months. Suspension of the requested language would allow up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that during 1985, producer receipts pooled under the Eastern Colorado order increased 12.7 percent over the previous year. At the same time, the cooperative states, producer milk in Class I rose only 1.8 percent. According to the cooperative, there are ample supplies of local milk to meet the fluid requirements of Eastern Colorado distribution plants as a result of increased milk production. However, Mid-Am estimates that approximately 15 loads of producer milk per month would have to be shipped from farms in Kansas and Nebraska to Eastern Colorado pool distributing plants in order to qualify Mid-Am producers for continued pool status. The cooperative states that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: February 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–4821 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85-036E]

Facility and Equipment Requirements for the Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 29, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. FSIS has received a request from the National Broiler Council to allow more time for reviewing and gathering information. FSIS concurs in this request and is hereby extending the comment period for 45 days.

DATE: Comments must be received on or before April 14, 1986.

ADDRESS: Written comments to: Policy Office, Attn: FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, Washington, DC 20250; Telephone (202) 447-3217.

SUPPLEMENTARY INFORMATION: On January 29, 1986, FSIS published in the **Federal Register** (51 FR 3621) a proposed rule to amend the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. The proposed regulation would specify certain critical dimensions for facilities at the inspection and reinspection stations for SIS that the Agency deems to be appropriate and essential to assume optimum inspection performance under the new system. It would require the installation of an appropriately designed, adjustable platform at each inspector's station. In addition, the proposed regulation would provide for carcass selection devices known as selector or "kickouts" to be installed at inspection stations. The proposal would also require equipment appropriate to permit adequate lighting and proper handwashing and handling of carcasses and parts, including the proper disposal of condemned carcasses and parts.

Interested persons were given until February 28, 1986, to comment on this proposed rule. FSIS has received a request from the National Broiler Council to extend the comment period to allow more time to review and gather information on the proposal. FSIS is interested in receiving additional data, and therefore is extending the comment period for an additional 45 days, to April 14, 1986.

Done at Washington, DC on: March 3, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-4929 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Appliance Standards

AGENCY: Conservation and Renewable Energy, DOE

ACTION: Proposed Rules; Withdrawal and Termination.

SUMMARY: Today's notice withdraws and terminates the U.S. Department of Energy rulemakings to prescribe energy efficiency standards for dishwashers, television sets, clothes washers and humidifiers and dehumidifiers, and to grant State petitions for exemptions from Federal preemption of State or local energy efficiency standards.

DATE: This withdrawal and termination is effective March 5, 1986.

FOR FURTHER INFORMATION CONTACT:
Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station CE-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION:

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163, 87 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, 92 Stat. 3266), which requires DOE to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325 (a)(1) and (c). The Act provides, however, that no standard is to be established if there is no procedure for the product; or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy would be a rule that supersedes any State standard. Section 325(b). A State whose energy efficiency standard would be superseded, however, may petition the Department for a rule that it not be superseded. Section 327(b)(3).

On December 15, 1982, DOE issued a final rule with respect to two covered products, clothes dryers, and kitchen ranges and ovens. 47 FR 57198 (December 22, 1982). (Hereafter referred to as the December 1982 rule.) With respect to both products, DOE determined that a standard would not result in significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE by States to obtain exemption from preemption of State or local energy efficiency standards. On August 25, 1983, DOE issued a final rule with respect to six further covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376 (August 30, 1983). (Hereafter referred to as the August 1983 rule.) For each of the six products covered by the August 1983 rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in

significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

On March 15, 1985, the Department issued a proposed rulemaking regarding energy efficiency standards for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. 50 FR 12966 (April 1, 1985). On August 8, 1984, DOE proposed to grant petitions from 26 States requesting, in each case, that State efficiency standards pertaining to one or more of eight covered products in the December 1982 and August 1983 rules be exempted from Federal preemption. 49 FR 32944 (August 17, 1984). On May 3, 1985, DOE proposed to grant petitions from two States, Michigan and Hawaii, requesting in each case, that State regulations pertaining to the energy use or energy efficiency of certain appliances be exempted from Federal preemption. 50 FR 21450 (May 24, 1985).

The December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department of Energy. The Court of Appeals granted NRDC's petition and set aside DOE's December 1982 and August 1983 final rules. *NRDC v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985). That decision having now become final, the Department is giving notice of the termination and withdrawal of affected rulemakings in progress. These are the proposed rules regarding energy efficiency standards for dishwashers, television sets, clothes washers and humidifiers and dehumidifiers, 50 FR 12966, and the rules proposing to grant the 26 State petitions, 49 FR 32944, and the Michigan and Hawaii petitions, 50 21450, for exemption from Federal preemption of State or local energy efficiency standards.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, February 12, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-4809 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-3-000]

Ceiling Prices; Old Gas Pricing Structure

February 26, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice providing for reply comments and establishing a public conference.

SUMMARY: As discussed more fully below in this notice, the Commission is providing for reply comments on the proposal by the Secretary of the Department of Energy relating to old gas pricing structure. Also, the Commission is scheduling a public conference to discuss specific issues.

DATES: Reply comments are due on March 27, 1986. The public conference will convene at 9 a.m. on April 10 and 11, 1986. Requests to participate in the public conference must be directed to the Secretary on or before March 21, 1986.

ADDRESSES: The hearing will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Reply comments and requests to participate and questions regarding participation in the public conference should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth Plumb, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the Federal Energy Regulatory Commission (Commission) issued a notice of procedural schedule, 50 FR 52935 (Dec. 27, 1985), establishing a schedule for public comment on a notice of proposed rulemaking issued by the Department of Energy under section 403 of the Department of Energy Organization Act, 42 U.S.C. 4273 (1982), for action by the Commission, 50 FR 48540 (Nov. 25, 1985).

Under the Secretary's proposed rule, the Commission would exercise its authority: (1) Under sections 104 and 106 of the National Gas Policy Act of 1978 (NGPA), to establish just and reasonable prices for "flowing" old gas, and (2) under section 107 of the NGPA, to establish incentive prices for certain categories of old gas. Under the proposal, the Commission would act to eliminate vintaging and replace the current myriad of old gas ceiling prices with a single ceiling price (the ceiling price for post-1974 gas). In addition, the Commission would establish incentive prices for certain categories of old gas, in order to increase significantly the production of old gas and to encourage long-term investment in natural gas exploration, development, and production. In this order, the Commission is providing for a period for reply comments and establishing a public conference.[1] An original and 14 copies of the reply comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, by 4:30 p.m. e.s.t. on March 27, 1986. Also, any interested person may request, in writing, to participate in the public conference that will convene at 9 a.m. on April 10 and 11, 1986.

The public conference will not be of judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels. The Commission will issue another notice setting specific issues to be discussed in the conference. There will be no cross examination of persons presenting statements. However, the Commission panel may question these persons. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM86-3-000, in the Commission's Division of Public Information, Room 1000, and may be ordered from that office.

Requests to participate in the hearing should be submitted, in writing, on or before March 21, 1986, to the Office of the Secretary. A list of the participants in the conference will be available in the Commission's Division of Public Information and at the hearing room on the morning the conference is convened.

By the direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-4692 Filed 3-4-86; 8:45 am]

BILLING CODE 6717-01-M

[1] The Commission notes that it has received motions from Associated Gas Distributors (AGD), United Distribution Companies (UDC) and others in this docket. For example, AGD requests that the Commission establish further procedures including reply comments, discovery, and an extension of the initial comment period.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225A]

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rules; changes in hearing schedule and dates for submission of documents.

SUMMARY: This notice announces changes in the starting date of public hearings and changes in the dates for submission of comments, noitices of intention to appear, and other documentary evidence on the proposed revision of the standard for occuptional exposure to formaldehyde (50 FR 50412. December 10, 1985). It has been brought to the Agency's attention that the hearing, which was originally scheduled to begin on April 22, 1986, would conflict with the observance of the Passover holiday. The hearing has been rescheduled to begin on May 5, 1986 to avoid this conflict. The rescheduling of the starting date of the hearing allows the Agency to extend the dates by which the public must submit comments and other documents related to participation at the rulemaking hearings on occupational exposure to formaldehyde.

DATES: Wrtten comments on the proposed standard must be postmarked on or before March 24, 1986. Notices of intention to appear at the informal rulemaking hearings on the proposed standard must be received by March 24, 1986. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than April 14, 1986. All comments and documents related to public participation in the informal rulemaking hearings must be submitted in quadruplicate (see 50 FR 50412, 50487, December 10, 1985).

The informal rulemaking hearing is scheduled to begin on May 5, 1986, at 10:00 A.M.

ADDRESSES: Written comments on the formaldehyde proposal are to be submitted to the Docket Officer, Docket No. H-225A, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C., 20210, telephone (202) 523-7894.

The informal rulemaking hearing will be held in the Auditorium, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, telephone (202) 523-7894.

Notices of intention to testify at the hearing, testimony, and documentary evidence are to be sent to Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-225A. Room N-3662, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington. DC 20210, telephone (202) 523-8024.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Forster, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington. DC 20210. telephone (202) 523-8151.

Signed at Washington. DC, this 25th day of February 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 4662 Filed 3-4-86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Outer Continental Shelf, Oil and Gas and Sulphur Operations; Platforms and Other Facilities

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (DOI) is considering amending its regulations concerning the disposition of platforms and other facilities used in oil and gas production in the Outer Continental Shelf (OCS) following termination of production. The amendments being considered would revise Minerals Management Service (MMS) rules which require the removal of all structures and facilities upon the cessation of operations. These changes would make it possible for structures to remain in the OCS leasehold under permits which may be granted by the Corps of Engineers (Corps) or other authority with jurisdiction in the OCS. The MMS is seeking comments on the changes to its regulations that are being considered.

DATE: Comments must be hand-delivered or postmarked no later than April 4, 1986.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION:

Background

For the past several years, DOI and MMS have been considering the desirability of modifying the regulatory requirement for complete removal of all platforms and other facilities from OCS leases when production is terminated. Although regulations continue to require complete clearance of the seabed, several actions to promote platform dispositions which could entail leaving structures wholly or partially in the OCS have been undertaken by Congress, DOI, and MMS.

In January 1983, DOI formed the Recreational and Environmental Enhancement for Fishing in the Seas (REEFS) Task Force with Federal, State, and private sector representatives. At that time, DOI announced its support for a policy to permit platforms, or other facilities or parts thereof, to remain on OCS leaseholds for the protection of fish and other aquatic life and for the conservation of natural resources.

During 1983-84, a Memorandum of Understanding among five Federal Departments and Agencies was developed to address the divergent interests and responsibilities of these groups in various matters in the OCS. The document outlined procedures to ensure consultations among those Agencies, but it has not been finalized.

In November 1984, the enactment of the National Fishing Enhancement Act of 1984 (Act), Pub. L. 98-623, established a national policy and program to promote the development of artificial reefs for fish habitats and the ultimate increase in fishery production. In compliance with this legislation, the Department of Commerce has developed a long-term national plan for artificial reefs outlining criteria for the design, materials, and siting of reefs. Under the Act, the Corps is responsible for issuing reef permits specifying design, location, and construction material. A variety of materials is used to contruct artificial reefs, but offshore oil and gas structures are particularly well suited for this use. The Corps is also responsible for ensuring that titles to reefs and financial capability for maintenance and liability are established. In July 1985, the Corps issued proposed regulations to enable it

to fulfill these responsibilities (50 FR 30479).

In November 1984, MMS published an Advance Notice of Proposed Rulemaking (ANPR) to solicit information on the legal, economic, safety, and other aspects of various alternatives for the disposition of postproduction platforms. This information was requested to support a study which DOI had commissioned from the National Research Council's Marine Board to analyze and advise MMS on the issue of platform removal. The Marine Board study was issued in mid-1985. It provides extentive information concerning the number, type, and location of offshore platforms and comparative cost estimates for several disposal options. It also discusses alternative policies for platform disposal and concludes that a more flexible U.S. policy on the disposition of offshore platforms is warranted.

These developments have significant implications for the offshore oil and gas industry. The general practice for disposition of obsolete platforms has been the complete removal of all structural elements and their return to a shore facility for salvage or scrap. As the number of obsolete platforms increases with the maturing of the offshore industry and platforms are located in deeper waters and farther from shore, the cumulative costs for removal to distant disposal locations onshore will become significant. Response to MMS's earlier inquiry on this question in the November 1984 ANPR estimated removal costs of several million dollars in moderate water depths (200 to 400 feet) with sharply increasing costs in waters 500 feet and greater. Therefore, the development of alternatives for platform disposal offers the possibility for major cost reductions with concomitant financial benefits for the offshore producers. This, in turn, can be expected to have a positive effect on future oil and gas prices.

MMS Position

There are a number of factors, including those outlined above, which indicate that modification of the MMS position on platform removal is appropriate to reflect recent developments.

The findings of the Marine Board study, the 1984 legislation promoting a national artificial reefs program, and the more flexible positions on platform removal emerging in some international arenas support the allowance of alternatives for platform disposal under certain circumstances. In addition, it is the policy of MMS not to impose unnecessary costs on offshore oil and gas operations. Therefore, MMS favors the most economical disposition of obsolete platforms consistent with navigational and human safety, national defense requirements, and environmental safeguards. The MMS desires to facilitate platform disposal alternatives which meet these criteria and the specific conditions required to obtain the necessary permits from the Corps or possibly the Environmental Protection Agency (EPA). Any future MMS approval of alternative platform disposal plans which entail structures remaining on leases in the OCS, in whole or in part, would be conditioned on the proper permits having been obtained from those Government Agencies which are authorized to issue permits for such disposal. In contemplation of this possibility, we believe it is appropriate to eliminate any MMS regulatory provisions which might be an impediment to the issuance of such permits and the implementation of this policy. Consequently, we are evaluating changes to MMS rules.

Rule Changes Comtemplated

Current MMS platform removal regulations and the stipulations for site clearance in MMS leases and OCS Orders are inconsistent with the policy outlined above to allow platforms to remain on the lease site if the necessary permits have been obtained. To alleviate this conflict and to provide for consistency with the Corps regulations, MMS intends to amend its rules concerning site clearance. These amendments will be designed to accomplish the following:

- Modify the absolute requirements to clear sites.
- Require lessees to indicate whether they have considered obtaining an artificial reef or other permit.
- Provide a procedure for lessees to apply to MMS for approval to leave platforms onsite.
- Require that platform disposition not be inconsistent with navigational and human safety, national defense requirements, and environmental safeguards.
- Specify that MMS approval for leaving platforms or parts of structures on lease sites will be conditioned on lessees obtaining necessary permits from the Corps or EPA.

The MMS is seeking comments and suggestions from interested parties on the suitability of these objectives and on the best way to design regulatory provisions to implement them.

In developing these amendments, MMS will also take into account the provisions fo the Act which absolve persons transferring title to reef materials (donors of reefs) from liability for damages if the materials meet requirements and not "defective" when transferred.

We are, therefore, soliciting responses to the following questions:

- What would make a platform defective as a materials for artificial reef purposes? Is any equipment on a platform or oil and gas structure unsuitable for a reef?
- How can material in platforms be shown not to be defective?
- What should the role of MMS be relative to the Corps in determining whether or not platform materials are defective?

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public land/mineral resources, Reporting and recordkeeping requirements.

Dated: February 18, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-4742 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2951-3]

Air Pollution; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The purpose of this proposed rule is to revise and add additional concentration calculation equations and miscellaneous clarifications to a method already published in 40 CFR Part 60. The intended effect is to enhance the reliability of data produced by this test method.

DATES: *Comments.* Comments must be received on or before May 19, 1986.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

If anyone contacts EPA requesting to speak at a public hearing by March 26, 1986, a public hearing will be held on April 9, 1986, beginning at 10:00 a.m.

Persons interested in attending the hearing should call William Grimley at (919) 541–2237 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 26, 1986.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–85–23, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 26, 1986, the public hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify William Grimley, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

Docket. Docket No. A–85–23, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Grimley, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 18 was promulgated in the Federal Register on October 18, 1983 (48 FR 48344).

These proposed amendments are intended to improve the reliability of data produced by the method, and in that respect, comments are solicited on the entire method. Any comments submitted to the Administrator on the method should contain specific information and data pertinent to their evaluation.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed method revisions in accordance with section 307(d)(5) of the Clean Air Act. Persons wishinig to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) To serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Can surface coating, Cement industry, Coal, Copper, Electric power plants, Fiberglass insulation, Fossil-fuel-fired steam generators, Glass and glass products, Grains, Incorporations by reference, Industrial organic chemicals, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Organic solvent cleaners, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Synthetic fibers, Tires, Waste treatment and disposal, Zinc.

Dated: February 14, 1986.

Lee M. Thomas,

Administrator.

It is proposed to Amend 40 CFR Part 60, Appendix A, Method 18, as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, 301 Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By revising the first paragraph of section 1.2 as follows:

The major organic components of a gas mixture are separated by gas chromatography (GC) and individually quantified by flame ionization, flame photometric, electron capture, or other appropriate detection principles.

3. By revising the last sentence of section 4 as follows:

To adjust gaseous organic concentrations when water vapor is present in the sample, water vapor concentrations are determined for those samples, and a correction factor is applied.

4. By revising the first paragraph of section 5 as follows:

Perform a presurvey for each source to be tested. Refer to Figure 18–1. Some of the information can be collected from literature surveys and source personnel. Collect gas samples that can be analyzed to confirm the identities and approximate concentrations of the organic emissions.

5. By adding a sentence after the heading of section 5.1 as follows:

5.1 Apparatus. This apparatus list also applies to sections 6 and 7.

6. By revising section 5.1.4 as follows:

5.1.4 Flowmeters. To measure flow rates.

7. By revising section 5.1.7 as follows:

5.1.7 Syringe. 0.5-ml, 1.0- and 10-microliter sizes, calibrated, maximum accuracy (gas tight) for preparing calibration standards.

8. By adding sections 5.1.19 and 5.1.20 as follows:

5.1.19 Sample Probes. Pyrex or stainless steel, of sufficient length to reach centroid of stack.

5.1.20 Barometer. To measure barometric pressure.

9. By revising section 5.2.4 as follows:

5.2.4 Organic Compound Solutions. Pure or nearly pure liquid samples of all the organic compounds needed to prepare calibration standards.

10. By removing the first sentence of section 6.

11. By revising the last paragraph of section 6.1.1 as follows:

Plants with analytical laboratories may also be able to provide information on appropriate analytical procedures.

12. By revising sections 6.2, 6.3, 6.4, and 6.5 as follows:

6.2 Calibration Standards. Prepare or obtain enough calibration standards so that there are three different concentrations of each organic compound expected to be in the source sample. For each organic compound, select those concentrations that bracket the concentrations expected in the source samples. A calibration standard may contain more than one organic compound. If available, commercial cylinder gases may be used if their concentrations have been certified by direct analysis.

If samples are collected in adsorbent tubes (charcoal, XAD–2, Tenax, etc.), prepare or obtain standards in the same solvent used for the sample extraction procedure. Refer to section 7.4.3.

Verify the stability of all standards for the time periods they are used. If gas standards are prepared in the laboratory, use one or more of the following procedures.

6.2.1 Preparation of Standards from High Concentration Cylinder Standards. Obtain enough high concentration cylinder standards to represent all the organic compounds expected in the source samples.

Use these high concentration standards to prepare lower concentration standards by dilution, as shown by Figures 18–5 and 18–6.

To prepare the diluted calibration samples, calibrated rotameters are normally used to meter both the high concentration calibration gas and the diluent gas. Other types of flowmeters may be used.

Calibrate each flowmeter before use by placing it between the diluent gas supply and a suitably sized bubble meter, spirometer, or wet test meter. Record all data shown on Figure 18–4. While it is desirable to calibrate the cylinder gas flowmeter with cylinder gas, the available quantity and cost may preclude it. The error introduced by using the diluent gas for calibration is insignificant for gas mixtures of up to 1,000 to 2,000 ppm of each organic component.

Once the flowmeters are calibrated, connect the flowmeters to the calibration and diluent gas supplies using 6-mm Teflon tubing. Connect the outlet side of the flowmeters through a connector to a leak-free Tedlar bag as shown in Figure 18–5. (See section 7.1 for bag leak-check procedures.) Adjust the gas flow to provide the desired dilution, and fill the bag with sufficient gas for GC calibration. Be careful not to overfill and cause the bag to apply additional pressure on the dilution system. Record the flow rates of both flowmeters and the laboratory temperature, and atmospheric pressure. Calculate the concentration C_s in ppm of each organic in the diluted gas as follows:

$$C_s = \frac{10^6(\bar{X}\, q_c)}{q_c + q_d} \qquad \text{Eq. 18-1}$$

where:

10^6 = Conversion to ppm.

$\bar{X}$ = Mole fraction of the organic in the calibration gas to be diluted.

q_c = Flow rate of the calibration gas to be diluted.

q_d = Diluent gas flow rate.

Single-stage dilution should be used to prepare calibration mixtures up to about 1:20 dilution factor.

For greater dilutions, a double dilution system is recommended, as shown in Figure 18–6. Fill the Tedlar bag with the dilute gas from the second stage. Record the laboratory temperature, barometric pressure, and static pressure readings. Correct the flow readings for temperature and pressure. Calculate the concentration C_s in ppm of the organic in the final gas mixture as follows:

$$C_s = 10^6\, \bar{X} \left(\frac{q_{c1}}{q_{c1} + q_{d1}}\right)\left(\frac{q_{c2}}{q_{c2} + q_{d2}}\right) \qquad \text{Eq. 18-2}$$

where:

10^6 = Conversion to ppm.

$\bar{X}$ = Mole fraction to the organic in the calibration gas to be diluted.

q_{c1} = Flow rate of the calibration gas to be diluted in stage 1.

q_{c2} = Flow rate of the gas from stage 1 that is to be diluted in stage 2.

q_{d1} = Flow rate of diluent gas in stage 1.

q_{d2} = Flow rate of diluent gas in stage 2.

Further details of the calibration methods for flowmeters and the dilution system can be found in Citation 21 in the Bibliography.

6.2.2 Preparation of Standards from Volatile Materials. Record all data shown on Figure 18–3.

6.2.2.1 Gas Injection Technique. This procedure is applicable to organic compounds that exist entirely as a gas at ambient conditions. Evacuate a 10-liter Tedlar bag that has passed a leak-check (see section 7.1), and meter in 5.0 liters of air or nitrogen through a dry gas meter that has been calibrated in a manner consistent with the procedure described in section 5.1.1 of Method 5. While the bag is filling, use a 0.5-ml syringe to inject a known quantity of "pure" gas of the orangic compound through the wall of the bag, or through a septum-capped tee at the bag inlet. Withdraw the syringe needle, and immediately cover the resulting hole with a piece of masking tape. In a like manner, prepare dilutions having other concentrations. Prepare a minimum of three concentrations. Place each bag on a smooth surface, and alternately depress opposite sides of the bag 50 times to mix the gases. Record the average meter temperature and pressure, the gas volume and the barometric pressure. Record the syringe temperature and pressure before injection.

Calculate each organic standard concentration C_s in ppm as follows:

$$C_s = \frac{G_v \times 10^6 \;\frac{293}{T_s}\;\frac{P_s}{760}}{V_m\, Y\;\frac{293}{T_m}\;\frac{P_m}{760}\;\frac{1000\ \text{ml}}{1\ \text{liter}}} \qquad \text{Eq. 18-3}$$

where:

G_v = Gas volume of organic compound injected, ml.

10^6 = Conversion to ppm.

P_s = Absolute pressure of syringe before injection, mm Hg.

T_s = Absolute temperature of syringe before injection, °K.
V_m = Gas volume indicated by dry gas meter, liters.
Y = Dry gas meter calibration factor, dimensionless.
P_m = Absolute pressure of dry gas meter, mm Hg.
T_m = Absolute temperature of dry gas meter, °K.

6.2.2.2 Liquid Injection Technique. Use the equipment shown in Figure 18–8. Calibrate the dry gas meter as described in section 6.2.2.1 with a wet test meter or a spirometer. Use a water manometer for the pressure gauge and glass, Teflon, brass, or stainless steel for all connections. Connect a valve to the inlet of the 50-liter Tedlar bag.

To prepare the standards, assemble the equipment as shown in Figure 18–8, and leak-check the system. Completely evacuate the bag. Fill the bag with hydrocarbon-free air, and evacuate the bag again. Close the inlet valve.

Turn on the hot plate, and allow the water to reach boiling. Connect the bag to the impinger outlet. Record the initial meter reading, open the bag inlet valve, and open the cylinder. Adjust the rate so that the bag will be completely filled in approximately 15 minutes. Record meter pressure, temperature, and local barometric pressure.

Allow the liquid organic to equilibrate to room temperature. Fill the 1.0- or 10-microliter syringe to the desired liquid volume with the organic. Place the syringe needle into the impinger inlet using the septum provided, and inject the liquid into the flowing air stream. Use a needle of sufficient length to permit injection of the liquid below the air inlet branch of the tee. Remove the syringe.

When the bag is filled, stop the pump, and close the bag inlet valve. Record the final meter reading, temperature, and pressure.

Disconnect the bag from the impinger outlet, and set it aside for at least 1 hour to equilibrate.

Measure the solvent liquid density at room temperature by accurately weighing a known volume of the material on an analytical balance to the nearest 1.0 milligram. Take care during the weighing to minimize evaporation of the material. A ground-glass stoppered 25-ml volumetric flask or a glass-stoppered specific gravity bottle is suitable for weighing. Calculate the result in terms of g/ml. As an alternative, literature values of the density of the liquid at 20°C may be used.

Calculate each organic standard concentration C_s in ppm as follows:

$$C_s = \frac{\frac{L_v \rho}{M}(24.055 \times 10^6)}{V_m Y \frac{293}{T_m}\frac{P_m}{760}\frac{1000\ \mu l}{ml}} = 6.24 \times 10^4 \frac{L_v \rho T_m}{M V_m Y P_m} \qquad \text{Eq. 18-4}$$

where:

L_v = Liquid volume of organic injected, µl.
ρ = Liquid organic density as determined, g/ml.
M = Molecular weight of organic, g/g-mole.
24.055 = Ideal gas molar volume at 293°K and 760 mm Hg, liters/g-mole.
10^6 = Conversion to ppm.

6.3 Preparation of Calibration Curves. Establish proper GC conditioning, then flush the sampling loop for 30 seconds at a rate of 100 ml/min. Allow the sample loop pressure to equilibrate to atmospheric pressure, and activate the injection valve. Record the standard concentration, attenuator factor, injection time, chart speed, retention time, peak area, sample loop temperature, column temperature, and carrier gas flow rate. Repeat the standard injection until two consecutive injections give area counts within 5 percent of their average. The average multiplied by the attenuator factor is then the calibration area value for that concentration.

Repeat this procedure for each standard. Prepare a graphical plot of concentration (C_s) versus the calibration area values. Perform a regression analysis, and draw the least squares line.

6.4 Relative Response Factors. The calibration curve generated from the standards for a single organic can usually be related to each of the individual GC response curves that are developed in the laboratory for all the compounds in the source. In the field, standards for that single organic can then be used to "calibrate" the GC for all the organics present.

This procedure should first be confirmed in the laboratory by preparing and analyzing calibration standard containing multiple organic compounds.

6.5 Quality Assurance for Laboratory Procedures. Immediately after the preparation of the calibration curves and prior to the presurvey sample analysis, the analysis audit described in Part 61, Appendix C, Procedure 2: "Procedure for Field Auditing GC Analysis", should be performed. The information required to document the analysis of the audit samples has been included on the example data sheets shown in Figures 18–3 and 18–7. The audit analyses should agree with the audit concentrations within 10 percent. When available, the tester may obtain audit cylinders by contacting: U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711. Audit cylinders obtained from a commercial gas manufacturer may be used provided that (a) the gas manufacturer certifies the audit cylinder in a manner similar to the procedure described in Part 61, Appendix B, Method 106, section 5.2.3.1, and (b) the gas manufacturer obtains an independent analysis of the audit cylinders to verify this analysis. Independent analysis is defined as an analysis performed by an individual other than the individual who performs the gas manufacturer's analysis, while using calibration standards and analysis equipment different from those used for the gas manufacturer's analysis. Verification is complete and acceptable when the independent analysis concentration is within 5 percent of the gas manufacturer's concentration.

13. By revising section 7.1.1 as follows:

7.1.1 Evacuated Container Sampling Procedure. In this procedure, the bags are filled by evacuating the rigid air-tight container holding the bags. Use a field sample data sheet as shown in Figure 18–10. Collect triplicate samples from each sample location.

14. By changing the first word after the heading of section 7.1.2 from "Flow" to "Follow."

15. By revising section 7.1.5 and 7.1.6 and adding 7.1.7 and 7.1.8 to read as follows:

7.1.5 Analysis of Bag Samples.

7.1.5.1 Apparatus. Same as section 5. A minimum of three gas standards are required.

7.1.5.2 Procedure. Establish proper GC operating conditions as described in section 6.3, and record all data listed in Figure 18–7. Prepare the GC so that gas can be drawn through the sample valve. Flush the sample loop with gas from one of the three calibration mixtures, and activate the valve. Obtain at least two chromatograms for the mixture. The results are acceptable when the peak areas from two consecutive injections agree to within 5 percent of their average. If they do not, run additional analyses or correct the analytical techniques until this requirement is met. Then analyze the other two calibration mixtures in the same manner. Prepare a calibration curve as described in Section 6.3.

Analyze the source gas samples by connecting each bag to the sampling valve with a piece of Teflon tubing identified for that bag. Follow the specifications on replicate analyses specified for the calibration gases. Record the data listed in Figure 18–11. If certain items do not apply, use the notation "N.A." After all samples have been analyzed, repeat the analyses of the calibration gas mixtures, and generate a second calibration curve. Use an average of

the two curves to determine the sample gas concentrations. If the two calibration curves differ by more than 5 percent from their mean value, then report the final results by comparison to both calibration curves.

7.1.6 Determination of Bag Water Vapor Content. Measure and record the ambient temperature and barometric pressure near the bag. From a water saturation vapor pressure table, determine and record the water vapor content as a decimal figure. (Assume the relative humidity to be 100 percent unless a lesser value is known.) If the bag has been maintained at an elevated temperature as described in section 7.1.4, determine the stack gas water content by Method 4.

7.1.7 Quality Assurance. Immediately prior to the analysis of the stack gas samples, perform audit analyses as described in Section 6.5. The audit analyses must agree with the audit concentrations within 10 percent. If the results are acceptable, proceed with the analyses of the source samples. If they do not, then determine the reason for the discrepancy, and take corrective action before proceeding.

7.1.8 Emission Calculations. From the average calibration curve described in section 7.1.5, select the value of C_s that corresponds to the peak area. Calculate the concentration C_c in ppm, dry basis, of the organic in the samples as follows:

$$C_c = \frac{C_s P_r T_i F_r}{P_i T_r (1-B_{ws})} \qquad \text{Eq. 18-5}$$

where:

C_s = Concentration of the organic from the calibration curve, ppm.

P_r = Reference pressure, the barometric pressure or absolute sample loop pressure recorded during calibration, mm Hg.

T_i = Sample loop temperature at the time of sample analysis, °K.

F_r = Relative response factor (if applicable, see Section 6.4).

P_i = Barometric or absolute sample loop pressure at time of sample analysis, mm Hg.

T_r = Reference temperature, the temperature of the sample loop recorded during calibration, °K.

B_{ws} = Water vapor content of the bag sample or stack gas, proportion by volume.

16. By removing the last paragraph of Section 7.2.2.

17. By adding sections 7.2.3, 7.2.4, and 7.2.5 as follows:

7.2.3 Determination of Stack Gas Moisture Content. Use Method 4 to measure the stack gas moisture content.

7.2.4 Quality Assurance. Same as Section 7.1.7. The audit gases must be introduced in the sample line immediately following the probe.

7.2.5 Emission Calculations. Same as Section 7.1.8.

18. By adding sections 7.3.3, 7.3.4, and 7.3.5 as follows:

7.3.3 Determination of Stack Gas Moisture Content. Same as section 7.2.3.

7.3.4 Quality Assurance. Same as section 7.2.4.

7.3.5 Emission Calculations. Same as section 7.2.5, with the dilution factor applied.

19. By revising Figure 18–3 to appear as follows:

BILLING CODE 6560-50-M

Preparation of Standards in Tedlar Bags
and Calibration Curve

Standards Preparation Data:	Standards Mixture #1	Standards Mixture #2	Standards Mixture #3
Organic:_____			
Bag number or identification			
Dry gas meter calibration factor			
Final meter reading (liters)			
Initial meter reading (liters)			
Metered volume (liters)			
Average meter temperature (°K)			
Average meter pressure, gauge (mm Hg)			
Average atmospheric pressure (mm Hg)			
Average meter pressure, absolute (mm Hg)			
Syringe temperature (°K) (Section 6.2.2.1)			
Syringe pressure, absolute (mm Hg) (Section 6.2.2.1)			
Volume of gas in syringe (ml) (Section 6.2.2.1)			
Density of liquid organic (g/ml) (Section 6.2.2.2)			
Volume of liquid in syringe (μl) (Section 6.2.2.2)			
GC Operating Conditions:			
Sample loop volume (ml)			
Sample loop temperature (°C)			
Carrier gas flow rate (ml/min)			
Column temperature			
Initial (°C)			
Rate change (°C/min)			
Final (°C)			
Organic Peak Identification and Calculated Concentrations:			
Injection time (24-hr clock)			
Distance to peak (cm)			
Chart speed (cm/min)			
Organic retention time (min)			
Attenuation factor			
Peak height (mm)			
Peak area (mm^2)			
Peak area x attenuation factor (mm^2)			
Calculated concentration (ppm) (Equation 18-3 or 18-4)			

Plot peak area x attenuation factor against calculated concentration to obtain calibration curve.

Figure 18-3. Data sheet - standards prepared in Tedlar bags and calibration curve.

20. By revising Figure 18-4 to appear as follows:

Flowmeter Calibration

Flowmeter number or identification _____
Flowmeter type _____
Calibration device (x): Bubble meter ___ Spirometer ___ Wet test meter ___
Readings at laboratory conditions:
Laboratory temperature (T_{lab}) _____ °K
Laboratory barometric pressure (P_{lab}) _____ mm Hg
Flow data:

Flowmeter			Calibration device		
reading (as marked)	temp. (°K)	pressure (absolute)	Time (min)	gas volume[a]	flow rate[b]

[a] = Volume of gas measured by calibration device, corrected to standard conditions (liters).

[b] = Calibration device gas volume/time.

Plot flowmeter reading against flow rate (standard conditions), and draw a smooth curve. If the flowmeter being calibrated is a rotameter or other flow device that is viscosity dependent, it may be necessary to generate a "family" of calibration curves that cover the operating pressure and temperature ranges of the flowmeter.

While the following technique should be verified before application, it may be possible to calculate flow rate readings for rotameters at standard conditions Q_{std} as follows:

$$Q_{std} = Q_{lab} \left(\frac{760 \times T_{lab}}{P_{lab} \times 293} \right)^{1/2}$$

Flow rate (laboratory conditions)	Flow rate (standard conditions)

Figure 18-4. Data sheet - flowmeter calibration.

21. By revising Figure 18-7 to appear as follows:

Preparation of Standards by Dilution of Cylinder Standard

Cylinder standard: Organic _____ Certified Concentration _____ ppm

Standards Preparation Data: Date _____

Stage 1	Mixture 1	Mixture 2	Mixture 3
Standard gas flowmeter reading			
Diluent gas flowmeter reading			
Laboratory temperature (°K)			
Barometric pressure (mm Hg)			
Flowmeter gage pressure (mm Hg)			
Flow rate cylinder gas at standard conditions (ml/min)			
Flow rate diluent gas at standard conditions (ml/min)			
Calculated concentration (ppm)			
Stage 2 (if used)			
Standard gas flowmeter reading			
Diluent gas flowmeter reading			
Flow rate stage 1 gas at standard conditions (ml/min)			
Flow rate diluent gas at standard conditions (ml/min)			
Calculated concentration (ppm)			
GC Operating Conditions:			
Sample loop volume (ml)			
Sample loop temperature (°C)			
Carrier gas flow rate (ml/min)			
Column temperature:			
Initial (°C)			
Program rate (°C/min)			
Final (°C)			
Organic Peak Identification and Calculated Concentrations:			
Injection time (24-hr clock)			
Distance to peak (cm)			
Chart speed (cm/min)			
Retention time (min)			
Attenuation factor			
Peak area (mm^2)			
Peak area x attenuation factor			

Plot peak area x attenuation factor against calculated concentration to obtain calibration curve.

Figure 18-7. Data sheet - standards prepared by dilution of cylinder standard.

[FR Doc. 86-4254 Filed 3-4-86; 8:45 am]
BILLING CODE 6560-59-C

40 CFR Part 268

[SWH-FRL-2977-9]

Hazardous Waste Management System; Land Disposal Restrictions; Petitioner's Guidance Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Petitioner's Guidance Manual and request for comments.

SUMMARY: The Environmental Protection Agency is today announcing the availability of a draft guidance manual for public comment. The document is entitled "Land Disposal Ban Variance Petitioner's Guidance Manual". The manual provides a basic description of the requirements for petitioning the Agency for removal of restrictions placed on land disposal of any hazardous waste under section 3004 (d), (e), or (g) of the Solid Waste Disposal Act (SDWA) as amended.

The Agency is requesting comments concerning the general concepts outlined in the guidance manual and on the specific details of the petition process. The Agency is offering this manual for public comment partly in hopes of facilitating public comment on the petition related aspects of the proposed Land Disposal Restriction Rule.

DATE: Comments on this draft guidance manual should be submitted by May 5, 1986.

ADDRESS: Comments on this draft guidance manual should be sent to Docket Clerk, Attn: LDR-2, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public docket is located in Rm. S-212 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All communications should identify the title of the manual.

Single copies of the draft guidance manual entitled, Land Disposal Restriction Variance Petitioners Guidance Manual: First Draft are available by calling the RCRA Hotline, at (800) 424-9346 or (202)-382-3000. The manual is available for reading at all EPA libraries and in the EPA docket Room S-212, U.S. Environmental Protectin Agency, 401 M Street SW., Washington, DC 20460, from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this guidance contact: James Bachmaier, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC (202) 382-4679.

SUPPLEMENTARY INFORMATION: The manual provides a more detailed description of the petitioning process than is indicatd in the preamble to the proposed Land Disposal Restrictions Decision Rule published in the **Federal Register** on January 14, 1986 (51 FR 1602). The proposed Land Disposal Restrictions Rule is in response to amendments to the Solid Waste Disposal Act (SDWA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA) on November 8, 1984.

Since the draft guidance manual is based on a proposed rule, the approach and content of the final version of the guidance, when issued, will be dependent on the approach promulgated in the final Land Disposal Restrictions Rule. Promulgation of the first phase of final land disposal restrictions is scheduled for November 1986.

Dated: February 25, 1986.

Marcia Williams,

Director, Office of Solid Waste.

[FR Doc. 86-4636 Filed 3-4-86; 8:45 am]

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40 CFR Parts 796, 797, and 799

[OPTS-42008C; FRL-2978-5]

Unsubstituted Phenylenediamines; Proposed Test Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on unsubstituted phenylenediamines (pda). Extension of the comment period is necessary to permit adequate time for the public to comment on the chemical fate and environmental toxicity testing scheme presented in the pda proposed test rule.

DATES: Written comments on the proposed rule should be submitted on or before April 10, 1986.

ADDRESS: Address written comments in triplicate identified by the document control number OPTS-42008C to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street SW., Washington, DC 20460.

The public records supporting these actions are available for inspection in Room E-107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: Proposed rulemaking for pda's was published in the **Federal Register** of January 6, 1986 (51 FR 472). The proposed test rule included a triggered testing program for chemical fate and environmental toxicity testing. The program requires that the results of environmental fate testing be used to provide a predicted environmental concentration (PEC) for the three unsubstituted pdas. The PEC would then be compared with acute aquatic toxicity test data to determine whether additional acute toxicity testing in other aquatic species or chronic testing in the most sensitive aquatic species should be conducted. The proposed test rule also requires triggering of oncogenicity testing from the results of a sex-linked recessive lethal test. Industry has requested a 60-day extension period in which to provide written comments on the proposed rule. Since the environmental effects section of the proposed rule presents a new EPA approach to generating test data, the Agency is granting a 30-day extension on the comment period to permit adequate public comment on the proposed chemical fate and environmental toxicity testing scheme. Public comments will be due on or before April 10, 1986.

Authority: 15 U.S.C. 2603.

Dated: February 25, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-4753 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Kenai National Wildlife Refuge, Resource Protection Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to issue specific regulations for public use and access on the Kenai National Wildlife Refuge (NWR). These regulations would further define existing general regulations and describe the conditions under which public use and recreation, including but not limited to, hunting, fishing, trapping, and camping, will be permitted on the refuge. To protect refuge resources, to promote the safety of refuge users, and to more equitably allocate opportunities to enjoy refuge facilities, these refuge-specific regulations are proposed pursuant to 50 CFR 36.42 (e) and (g).

DATE: Comments must be received on or before May 5, 1986.

ADDRESS: Comments should be addressed to Regional Director (ATTN: William Knauer, Wildlife Resources), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

FOR FURTHER INFORMATION CONTACT: Mr. William Knauer (address above) or the Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669; telephone (907) 262–7021.

SUPPLEMENTARY INFORMATION: Regulations proposed in this rule would supplement and amend the Management Regulations for Alaska National Wildlife Refuge (50 CFR Part 36), published at 46 FR 31827 on June 17, 1981. The rule is proposed in accordance with the public participation and closure procedure described in 50 CFR 36.42. When finalized the regulations contained herein would supersede the special regulations for Kenai NWR contained in 50 CFR 26.34. Those special regulations were promulgated to protect Alaska refuge resources and ensure public safety while still allowing traditional activities and recreational use.

Kenai NWR was used by nearly one-half million visitors in 1985, and the number of visitors is increasing. The proposed regulations for access and public use are designed to protect the refuge's fish, wildlife, and habitat resources from the effects of intensive unregulated public use. The regulations will also assist in protecting the health and safety of the many people who use the Kenai NWR.

These regulations are consistent with the preferred management alternative in the Kenai NWR Comprehensive Conservation Plan (CCP), for which a Record of Decision was signed on June 27, 1985. A detailed examination of their need is available for review at the refuge headquarters and the regional office (address above).

The policy of the Department of the Interior is, whenever, practicable, to afford the public an opportunity to participate in the rulemaking process. Therefore, it is the purpose of this proposed rulemaking to seek public input regarding the proposed public use and access regulations for Kenai NWR. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Regional Director (address above) by the end of the comment period. Public hearings to receive comments will be held in Anchorage, Homer, and Soldotna, Alaska. Prior notice will be provided in the major affected areas. All relevant comments will be considered prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

Executive Order 8979 of December 16, 1941, orginally established the Kenai National Moose Range. The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3101) redesignated the Moose Range as the Kenai National Wildlife Refuge. The purposes of the refuge, outlined as follows, are specified in Sections 302 and 303 of ANILCA: a) conservation of fish and wildlife populations and habitats; b) fulfillment of international treaty obligations; c) protection of water quality and quantity, consistent with (a) above; d) provision of opportunities for scientific research, interpretation, enviromental education and land management training, consistent with (a) and (b) above; and e) provision of opportunities for fish and wildlife-oriented recreation in a manner compatible with refuge purposes. ANILCA also designated 1.35 million acres or about 69% of the refuge as wilderness, which is managed in accordance with the provisions of the Wilderness Act, the National Wildlife Refuge System Administration Act, and ANILCA.

Section 304 of ANILCA requires the Secretary to prescribe such regulations as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska are compatible with the purposes of the refuge.

Section 1110(a) of ANILCA opens all Alaska refuges, including designated wilderness areas, to public access by airplanes, motorboats, snowmobiles and traditional nonmotorized means, subject to reasonable regulation. Restrictions on these modes of access can be imposed only if refuge resources are being detrimentally impacted and if a public hearing is first held in the area in which the restriction would be imposed. The Service believes that unlimited, unrestricted public use would harm the resource values of the refuge, as described in the document entitled "Resource Needs for Regulations on Kenai National Wildlife Refuge", which is available from the refuge or regional office (addresses above). This document also describes in detail the resource impact bases for the access restrictions that would be implemented by the proposed regulations, and thus demonstrates the consistency of the proposed regulations with the requirements of section 1110(a).

The proposed regulations also have been evaluated as to their impact on subsistence uses as required by section 810 of ANILCA. The proposed public use and access would not be significantly different from that currently allowed. The proposed regulations are consistent with the purposes and intent of section 810 and would result in no significant restrictions on subsistence activities.

Properly regulated public use and access, as proposed by these rules, are consistent with and will not interfere with the refuge purposes delineated above, and are thus compatible with the purposes for which this refuge was established.

Environmental Considerations

The Final Environmental Statement for Operation of the National Wildlife Refuge System [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). An environmental assessment and finding of no significant impact for proposed interim regulations for Alaska national wildlife refuges was approved on May 13, 1981. The regulations proposed herein do not involve a significant change in the level of use previously permitted. An environmental impact statement on the management of Kenai NWR was completed in April 1985 and a Record of Decision was signed on June 27, 1985. These proposed regulations are in conformance with that Record of Decision.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) requires each information collection requirement to display an Office of Management and Budget (OMB) clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is

voluntary, mandatory, or required to obtain a benefit. The Service has received approval from OMB for the information collection requirements of these regulations under the approval numbers cited below:

Type of information collection	OMB approval No.
Special use permits on Alaska Refuges (including trapping)	1018-0061.

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities requiring that public uses be compatible with the primary purposes for which the areas were established.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organization or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule is expected to cost the National Wildlife Refuge System less than $15,000 annually for permit processing and is expected to cost the users of refuge resources who need permits less than $8,000 annually ($15 estimated cost for time and information to develop each permit application).

Unregulated public use would ultimately result in the termination of many recreational activities on the refuge because of damage to refuge resources. Regulating public use as proposed in this document will allow recreational activities to continue, having a minor positive secondary effect on sporting goods stores, restaurants, hotels, motels, and inns. The proposed regulations will impose no costs on small entities. The exact number of businesses and the amount of trade that will result from implementing these regulations is unknown. The aggregate effect is a positive economic effect on a number of small entities. The number of small entities affected is unknown; however, the positive effects will be seasonal in nature and will, in most cases, merely continue existing uses of refuge areas. The impacts will not be significant.

William Knauer, Wildlife Resources, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, National Wildlife Refuge System, Public land-mineral resources, Public lands-rights-of-way, Recreation, Traffic regulations, Wildlife refuges.

For the reasons set out in the preamble, it is proposed to amend Part 36, Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for Part 36 continues to read as follows:

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd et seq.; Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) et seq.; Refuge Recreation Act, 16 U.S.C. 460k et seq.; Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96-511.

2. Subpart E—Permits and Public Participation, consisting of §§ 36.41 and 36.42 would be redesignated as Subpart F, as follows:

* * * * *

Subpart F—Permits and Public Participation

* * * * *

3. A new Subpart E consisting of § 36.39 would be added, to read as follows:

* * * * *

Subpart E—Refuge-Specific Regulations

§ 36.39 Public use.

(a) *General.* Public use of Alaska national wildlife refuges is permitted subject to all other parts of 50 CFR Part 36, those sections of 50 CFR Subchapter C not supplemented by Part 36, and the following refuge-specific requirements. In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued. Unless otherwise indicated, maps delineating designated-use areas are available from the respective refuge manager.

(b)–(h) [Reserved]

(i) *Kenai National Wildlife Refuge.*—(1) *Aircraft.* (i) The operation of aircraft on the Kenai National Wildlife Refuge, except in an emergency, is permitted only as authorized in designated areas as described below. These areas are also depicted on a map available from the refuge manager.

(A) Within the Canoe Lakes, Andy Simons, and Mystery Creek units of the Kenai Wilderness, only the following lakes are designated for airplane operations:

Canoe Lakes Unit

Scenic Lake	Grouse Lake
Snowshoe Lake	Nekutak Lake
King Lake	Wilderness Lake
Shoepac Lake	Bedlam Lake
Mull Lake	Norak Lake
Taiga Lake	Tangerra Lake
Bird Lake	Vogel Lake
Sandpiper Lake	Cook Lake

Andy Simons Unit

Upper Russian Lake	Lower Russian Lake
Pothole Lake	Twin Lake
Iceberg Lake	Harvey Lake
Kolomin Lake	Emerald Lake
Green Lake	Martin Lake
High Lake	Windy Lake

Dinglestadt Glacier terminus lake
Wusnesenski Glacier terminus lake
Tustumena Lake and all wilderness lakes within one mile of the shoreline of Tustumena Lake.

All unnamed lakes in Section 1 and 2, T.1 S., R.8 W., and Sections 4, 5, 8, & 9, T.1 S., R.9 W., S.M., AK.

Mystery Creek Unit

An unnamed lake in Section 11, T.6N., R.5W., S.M., AK.

(B) Airplanes may operate on all lakes outside the Kenai Wilderness except those lakes with recreational developments, including but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides. The non-wilderness lakes closed to aircraft operations are as follows:

North of Sterling Highway

Cashka Lake	Rainbow Lake
Anertz Lake	Dolly Varden Lake
Dabbler Lake	Weed Lake
West Lake	Lili Lake
Silver Lake	Mosquito Lake
Forest Lake	Breeze Lake
Watson Lake	Afonasi Lake
Imeri Lake	Upper Jean Lake

Skilak Loop Area (South of Sterling Highway and North of Skilak Lake)

All lakes are closed to aircraft except that airplanes may land on Bottenintnin Lake, which is open year-around and on Hidden Lake, which is open only for sport ice fishing.

South of Sterling Highway

Headquarters Lake is restricted to administrative use only.

(ii) Notwithstanding any other provision of these regulations, operation of aircraft is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present.

(iii) The operation of airplanes, at the pilot's own risk, is authorized on the unmaintained Indian Creek Airstrip.

(iv) Unlicensed aircraft are permitted to operate on the refuge only as authorized by a special use permit from the Refuge Manager.

(v) Airplanes may operate only within designated areas on the Chickaloon Flats, as depicted on a map available from the Refuge Manager.

(2) *Motorboats.* Motorboats are authorized on all waters of the refuge except under the following conditions and within the following areas:

(i) Motorboats are not authorized within the Canoe Lakes Unit of the Kenai Wilderness except on those lakes designated for airplane operations as described on a map available from the Refuge Manager. Motors are not authorized on those portions of the Moose ad Swanson Rivers within the Canoe Lakes Unit of the Kenai Wilderness.

(ii) That section of the Kenai River from the outlet of Skilak Lake downstream for three miles, is closed to motorboat use between March 15 and May 1, inclusive. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iii) That section of the Kenai River from the powerline crossing located approximately one mile below the confluence of the Russian and Kenai Rivers, downstream to Skilak Lake is closed to motorboats. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iv) Motors in excess of 10 horsepower are not authorized on the Moose, Swanson, Funny, Chickaloon, Killey, and Fox Rivers.

(v) A "no-wake" restriction applies to Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow Lakes.

(vi) Notwithstanding any other provision of these regulations, operation of a motorboat is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present.

(3) *Off-road vehicles.* (i) The use of air cushion, airboat, or other non-traditional motorized watercraft is not allowed on the Kenai National Wildlife Refuge, except as authorized by a special use permit from the refuge manager.

(ii) Off-road vehicle use, including operation on lake and river ice, is not permitted. Licensed highway vehicles are permitted on Hidden, Engineer, Kelly, Petersen, and Watson Lakes for ice fishing purposes only, and must enter and exit lakes via existing boat ramps.

(4) *Snowmobiles.* Operation of snowmobiles is authorized on the Kenai National Wildlife Refuge subject to the following conditions and exceptions:

(i) Snowmobiles are permitted between December 1 and April 30 only when the refuge manager determines that there is adequate snowcover to protect underlying vegetation and soils. During this time, the manager will authorize through public notice the use of snowmobilies less than 46 inches in width and less than 1,000 pounds (450 kg) in weight. Designated snowmobile areas are described on a map available from the refuge manager.

(ii) All areas above timberline are closed to snowmobile use except in the Caribou Hills.

(iii) The area within Sections 5, 6, 7, and 8, T.4 N., R. 10 W., S.M., AK., east of the Sterling Highway right-of-way including the Refuge Headquarters Complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes, and that area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road, Is closed to snowmobile use.

(iv) An area, including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Antler Lake, and west to the beginning point near Paddle Lake, is closed to snowmobile use.

(v) An area, including the Swan Lake Canoe Route, and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on th east from a point at the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary is closed to snowmoble use.

(vi) Within the Skilak Loop Special Management Area, snowmobiles are prohibited except on Hidden, Kelly, Petersen and Engineer lakes for ice fishing access only. Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(vii) Snowmobiles may not be used as an aid in big game hunting or for transporting big game animals. Snowmobiles may be used to transport fur animals, including wolves, and small game.

(viii) Snowmobiles may not be used on maintained roads within the wildlife refuge. Snowmobiles may cross a maintained road after stopping and when traffic on the roadway allows safe snowmobile crossing.

(ix) Snowmobiles may not be used for activities such as racing or for the herding, hazing, harassment or driving of wildlife.

(5) *Hunting and trapping.* (i) Firearms may not be discharged within ¼ mile of designated campgrounds, trailheads, waysides, buildings or the Sterling Highway.

(ii) A special use permit, available from the Refuge Manager, is required prior to baiting black bears.

(iii) Hunting with the aid or use of a dog for taking of big game is permitted only for black bear, and then only under the terms of a special use permit from the Refuge Manager.

(iv) Hunting and trapping within Sections 5, 6, 7, and 8, T.4 N., R. 10 W., S.M., AK., encompassing the Kenai National Wildlife Refuge Headquarters/Visitor Center and associated environmental education trails are prohibited. The boundary of these administrative and environmental education areas is depicted on a map available from the Refuge Manager.

(v) A person who has been airborne may not take, or assist in taking, free roaming fur animals on Kenai NWR until after 3:00 A.M. following the day in which the flying occurred. This does not apply to a trapper using a firearm or other means to dispatch an animal legally caught by trap or snare. This also does not apply to transportation of persons by regularly scheduled flights, to and between cities, town or villages than normally provide scheduled services to this area.

(6) *Fishing.* Fishing is prohibited June 1 to August 15 on the south bank of the Kenai River from the Kenai-Russian River Ferry dock to a point 100 feet downstream.

(7) *Other public uses.* (i) Camping is permitted on the Kenai NWR subject to the following restrictions:

(A) Camping may not exceed 14 days in any 30 day period anywhere on the refuge.

(B) Campers may not spend more than 2 consecutive days at the Kenai-Russian

River access area, more than 7 consecutive dates at Hidden Lake Campground, or more than 7 consecutive days in refuge shelters.

(C) Within developed campgrounds, camping is permitted only in designated areas and open fires are permitted only in Service-provided fire grates or portable, self-contained, metal fire grills.

(D) No camping is permitted within ¼ mile of the Sterling Highway, Ski Hill or Skilak Loop roads except in designated campgrounds.

(E) Campers may cut only dead and down timber for campfire use.

(F) Pets in developed campgrounds are permitted only on a leash no longer than nine feet.

(ii) Removal of timber, including the cutting of firewood for home use, is permitted only as authorized by a special use permit from the refuge manager.

(iii) Leaving personal property unattended longer than 72 hours is authorized only in designated areas or as authorized by a special use permit from the refuge manager.

(iv) Rock outcrop islands in Skilak Lake used by nesting cormorants and gulls and the adjacent waters within 100 yards are closed to public entry and use from March 15 to September 30. Maps showing these areas are available from the refuge manager.

(v) All radio transmitters, neck and leg bands, ear tags, or other research marking devices recovered from wildlife shall be turned into the refuge manager within 5 days after recovery.

(vi) Use of non-motorized wheeled vehicles is permitted only on refuge roads designated for public vehicular access.

(vii) The use of motorized equipment, including but not limited to, chainsaws, generators, and auxiliary power units, is not permitted within the Kenai Wilderness, except for the use of snowmobiles, airplanes, and motorboats in designated areas.

(viii) All canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points. Maximum group size is 15 persons.

Dated: January 30, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-4789 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 80

Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration Acts; Interest Earned From License Fees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopen comment period.

SUMMARY: The Service reopens the period for submission of comments from the public on the proposal (see 50 FR 50185, December 9, 1985) to revise the rules contained in 50 CFR Part 80 related to requirements for participation in the Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act.

DATE: The Service will consider information and comments received by March 28, 1986, in considering the making of a final rule.

ADDRESS: Please send correspondence concerning this notice to the Associate Director—Federal Assistance, Room 3024, Interior Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Taylor, Acting Chief, Division of Federal Aid, Room 634, Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Telephone (703) 235-1526.

SUPPLEMENTARY INFORMATION: On December 9, 1985, the Service published in the **Federal Register** (50 FR 50185) proposed revisions to § 80.4 of 50 CFR Part 80, Diversion of License Fees. These revisions, if finalized, would amend the requirements related to the prohibition against diversion of fees paid by fishermen and hunters.

The proposed revisions will have an impact on State fish and wildlife agencies as participants in the Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts.

On January 8, 1986, a Notice was published in the **Federal Register** (51 FR 769) to correct a typographical error in the text of the Proposed Rule. Because of this correction and the need expressed by some State fish and wildlife agencies for additional time to coordinate their response with other State agencies, the comment period has been reopened.

Therefore, the Service hereby extends the closing date of the comment period to March 28, 1986.

Dated: February 14, 1986.

Susan E. Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-4709 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 43
Wednesday, March 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

AGENCY: Committee on Administration.

Date: Monday, March 17, 1986.

Time: 2:30 P.M.

Location: Department of Commerce, Room 5859, 14th Street and Constitution Avenue, NW., Washington, DC.

Agenda: (1) Professor Burnele Powell's examination of declaratory orders as a means of agency advice-giving, and (2) Philip Harter's study of federal agencies' use of alternative dispute resolution techniques.

Contact: Charles Pou, Jr., 202–254–7065.

Public Participation: Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Richard K. Berg,
General Counsel.

[FR Doc. 86–4825 Filed 3–4–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 28, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
M.O. 931—Fresh Bartlett Pears Grown in Oregon and Washington
Not agency report forms but committee forms
Recordkeeping; Weekly; Semi-monthly
Businesses or other for-profit; 1,698 responses; 983 hours; not applicable under 3504(h)
George J. Kelhart, (202) 475–3919

• Statistical Reporting Service
Annual Mink Survey
Annually
Farms; 1,069 responses; 178 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447–6820

New

• Agricultural Marketing Service
Honey Research, Promotion and Consumer Information Order
On occasion
• Individuals or households; Farms; Businesses or other for-Profit; Small businesses or organizations; 15,000 responses; 1,500 hours; not applicable under 3504(h)
Jerry Brooks, (202) 447–5057

• Farmers Home Administration
Borrower Election Statement
One time
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 4,680 responses; 374 hours; not applicable under 3504(h)
Save Villano, (202) 382–1452

• Federal Crop Insurance Corporation
Standard Reinsurance Agreement
Annually
Businesses or other for-profit; 64 responses; 128 hours; not applicable under 3504(h)
William Flora, (202) 382–9798

Reinstatement

• Farmers Home Administration
7 CFR 1951–E, Servicing of Community Program Loans and Grants FmHA 451–33
On occasion
State or local governments; Non-profit institutions; 320 responses; 185 hours; not applicable under 3504(h)
Bill Hagy, (202) 382–9636

Revision

• Agricultural Marketing Service
Pork Promotion, Research, and Consumer Information Program LS–35 and –36
On occasion
Individuals or households; Farms; 40,500 responses; 570 hours; not applicable under 3504(h)
Robert Leverette, (202) 447–2650

• Economic Research Service
• Feasibility Test of Panels of Farmland Value Reporters
Quarterly

Farm; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 3,060 responses; 451 hours; not applicable under 3504(h)
William H. Heneberry, (202) 786–1430.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86–4820 Filed 3–4–86; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Florida National Scenic Trail; Availability of Draft Comprehensive Plan

AGENCY: Forest Service, USDA.

ACTION: Availability of Draft Comprehensive Plan for the Florida National Scenic Trail.

SUMMARY: Pub. L. 98–11 amended the National Trails System Act (16 U.S.C. 1244) adding the Florida Trail to the National Scenic Trail System. Section 5(e) of the National Trails System Act requires that a comprehensive plan for the acquisition, management, development, and use of the trail be developed and submitted to Congress. The Florida National Scenic Trail Draft Comprehensive Plan will be available for public review and comment on March 3, 1986.

ADDRESS: Requests for copies of the Florida National Scenic Trail Draft Comprehensive Plan should be sent to: Forest Supervisor, USDA-Forest Service, National Forests in Florida, 227 North Bronough Street, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: F. Norman Heintz at (904) 681–7265, Tallahassee, Florida, or Charles Huppuch at (404) 347–7252, Atlanta, Georgia.

Dated: February 25, 1986.

Don Percival,

Forest Supervisor.

[FR Doc. 86–4796 Filed 3–4–86; 8:45 am]

BILLING CODE 3410-11-M

Florida National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Florida National Scenic Trail Advisory Council will be held at 9:00 a.m. on Saturday, April 5, 1986, at the Withlacoochee Training Center, seven miles north of Brooksville, Florida.

The purpose of the Florida National Scenic Trail Advisory Council is to advise the Secretary of Agriculture on all matters of planning, management and development of the Florida National Scenic Trail. The agenda will include discussion of the comments received from public review of the Draft Comprehensive Plan.

The meeting will be open to the public; however, facilities and space for accommodating the public are limited. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact F. Norman Heintz, Recreation Staff Officer, USDA-Forest Service, National Forests in Florida, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone 904/681–7265. Minutes of the meeting will be available for public inspection at the above address approximately four weeks after the meeting.

Issued in Tallahassee, Florida on February 24, 1986.

Don Percival,

Forest Supervisor.

[FR Doc. 86–4797 Filed 3–4–86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Reinsurance Transactions with Insurance Companies Resident Aboard
Form Number: Agency—BE–48; OMB—0608–0016
Type of Request: Revision of a currently approved collection
Burden: 200 respondents; 300 reporting hours
Needs and Uses: The data collected are an integral part of the U.S. National Income and Product Accounts. These accounts are used extensively by Government, international organizations, industry, and other private groups
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of Economic Analysis
Title: Foreign Contract Operations of U.S. Construction, Engineering, Architectural, and Related Consulting and Technical Services Firms
Form Number: Agency—BE–47; OMB—0608–0015
Type of Request: Revision of a currently approved collection
Burden: 130 respondents; 455 reporting hours
Needs and Uses: The data collected are an integral part of the U.S. National Income and Product Accounts. These data are used extensively by Government, international organizations, industry, and other private groups
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 3, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86–4723 Filed 3–4–86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1986 Test Census of Los Angeles County—Census Community Awareness Program—Survey of Community Group Leaders
Form Number: Agency—DC–140–U; OMB—NA
Type of Request: New collection
Burden: 150 respondents; 75 reporting hours
Needs and Uses: This survey will be used to evaluate key Census Community Awareness Program activities which are mainly targeted

towards difficult-to-enumerate areas and population groups
Affected Public: Individuals or households
Frequency: One time only
Respondents's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 3, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86–4724 Filed 2–4–86; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–122–503]

Antidumping Duty Order; Certain Iron Construction Castings From Canada

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In separate Investigations concerning certain iron construction castings from Canada, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that these products are being sold at less than fair value and that sales of these products from Canada are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of certain iron construction castings from Canada made on or after October 28, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick O'Mara or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3798 or 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

The merchandise covered by this order consists of certain iron construction castings limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and value, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classified under item number 657.09 of the *Tariff Schedules of the United States (TSUS).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on October 28, 1985, the Department published its preliminary determination that there was reason to believe or suspect that certain iron construction castings from Canada were being sold at less than fair value (50 FR 43592). On January 16, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 2412).

On February 19, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importation materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain iron construction castings from Canada. These antidumping duties will be assessed on all unliquidated entries of the product entered, or withdrawn from warehouse, for consumption on or after October 28, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 43592).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-averaged antidumping duty margin as noted below.

Manufacturers/producers/exporters	Weighted-average margin (percent)
Mueller Canada, Inc.	9.8
Bibby Ste. Croix Foundries, Inc	[1] 8.6
LaPerle Foundry, Ltd	[1] 3.9
All other manufacturers/producers/exporters	[1] 7.0

[1] The margins of 8.6 for Bibby Ste. Croix Foundries, Inc., and 3.9 for LaPerle Foundry, Ltd., are changes from the original January 6, 1986 final determination figures of 10.9 and 7.4, respectively. These changes were made based upon clerical errors discovered in the respective calculations. Accordingly, the previous "all other" margin of 10.2 is changed to 7.0.

This determination constitutes an antidumping duty order with respect to certain iron construction castings from Canada, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

February 26, 1986.

[FR Doc. 86–4722 Filed 3–4–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–057]

Antidumping; Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Correction to Final Results of Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 10, 1984 the Department of Commerce published in the **Federal Register** (49 FR 1263) the final results of its administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 44811, September 7, 1977) for the periods December 1, 1978 through August 31, 1979 and September 1, 1979 through August 31, 1981. The assessment

rates for Babcock Allatt Ltd. (now Fortress Allatt Ltd.), for the time periods were zero percent and 4.20 percent, respectively. The 4.20 percent estimated antidumping duties cash deposit rate was based on the margins which we calculated for Fortress Allatt's purchase price and exporter's sales price transactions.

After providing interested parties with an opportunity to comment, we are establishing separate estimated antidumping duties cash deposit rates for purchase price transactions (zero percent) and for exporter's sales price transactions (14.43 percent) for Fortress Allatt Ltd.

These rates shall apply to all shipments of this merchandise from Fortress Allatt Ltd. entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These rates will remain in effect until the publication of the final results of the next administrative review

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2209/5255.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-4749 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-05-M

[A-588-045]

Antidumping; Steel Wire Rope From Japan; Initiation and Preliminary Results of Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on steel wire rope from Japan. The review covers 21 of the 121 known manufacturers and/or exporters of this merchandise to the United States and generally the period January 1, 1977 through March 31, 1978. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the period.

When company-supplied information was incomplete or no information was received in response to our questionnaire, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery or Phyllis Derrick, Office of Compliance, Internationl Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 12294) the final results of its last administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). In accordance with § 353.53 of the Commerce Regulations, the petitioner requested an administrative review of this finding on October 3, 1985. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated. The review covers 21 of the 121 known manufacturers and/or exporters of Japanese steel wire rope to the United States and generally the period January 1, 1977 through March 31, 1978.

One firm failed to respond to our questionnaire and other firms provided incomplete responses to certain portions of our questionnaire. For the non-responsive firm, we used the best information available for assessment purposes. The best information available was the rate from the immediately preceding period for that firm. For firms providing incomplete responses, we used the best information available for the incomplete portions of their responses.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, as defined, respectively, in sections 203 and 204 of the 1921 Act, as appropriate.

Purchase price was based on the f.o.b. packed price to unrelated trading companies for export to the United States. Exporter's sales price was based on the c.i.f. packed price to the first unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight, insurance, f.o.b. charges, ocean freight, marine insurance, wharfage and handling, U.S. inland freight, U.S. customs duties, bank charges, and the U.S. subsidiary's selling expenses. No other deductions were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price or constructed value, as defined, respectively, in sections 205 and 206 of the 1921 Act. Home market price was based on the packed delivered price with adjustments, where applicable, for inland freight, insurance, and differences in the cost of packing and credit.

Constructed value was calculated as the sum of materials and fabrication costs, general expenses, profit, and packing. The amount added for general expenses was ten percent of the sum of materials and fabrication costs, or actual general expenses, whichever was greater. The amount added for profit was eight percent of the sum of material and fabrication costs and general expenses, or actual profit, whichever was greater. We made adjustments, where applicable, for differences in the cost of credit.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
KoKoKu Steel Wire/Itohtaka	1/1/77-3/31/78	17.43
KoKoKu Steel Wire/Kanematsu-Gosho	1/1/77-3/31/78	0.35
KoKoKu Steel Wire/Maruka Machinery	1/1/77-3/31/78	3.89
KoKoKu Steel Wire/Mitsui & Co	1/1/77-3/31/78	11.81
KoKoKu Steel Wire/Nichimen Co	1/1/77-3/31/78	2.32

Manufacturer/exporter	Period	Margin (percent)
KoKoKu Steel Wire/Nissho-Iwai, Ltd.	1/1/77-3/31/78	0.19
KoKoKu Steel Wire/Shinsho Corp.	1/1/77-3/31/78	8.94
KoKoKu Steel Wire/UNA	1/1/77-3/31/78	31.76
Nippon Steel Mitsui & Co.	1/1/77-3/31/78	22.90
Shinko Wire Corp./Ataka & Co	1/1/75-7/31/76	0.10
	8/1/76-3/31/78	0
Shinko Wire Corp./Kanematsu-Gosho	1/1/75-3/31/78	0
Shinko Wire Corp./Nissho-Iwai, Ltd.	1/1/71-7/31/76	[1]0
	8/1/76-3/31/78	0
Shinko Wire Corp./Shinsho Corp.	1/1/75-10/31/76	0.10
	11/1/76-9/30/77	38.91
	10/1/77-3/31/78	12.04
Shinko Wire Corp./T. Chatani	8/1/76-3/31/78.	0
Shinko Wire Corp./Yuasa Trading	8/1/76-3/31/78	0
Teikoku-Sangyo/C. Itoh	1/1/77-3/31/78	5.01
Teikoku-Sangyo/Mitsui & Co.	1/1/77-3/31/78	6.73
Teikoku-Sangyo/Nissho-Iwai, Ltd.	1/1/77-3/31/78	8.84
Teikoku-Sangyo/Shinsho Corp.	1/1/77-3/31/78	26.80
Teikoku-Sangyo/Showa Boeki	1/1/77-3/31/78	0
Teikoku-Sangyo/Sumitomo Corp.	1/1/77-3/31/78	8.56
Teikoku-Sangyo/Tosho Co.	1/1/77-3/31/78	61.05
Tokyo Rope/Ataka & Co.	1/1/77-3/31/78	0.23
Tokyo Rope/C. Itoh	1/1/77-3/31/78	1.25
Tokyo Rope/Mitsubishi & Co.	1/1/77-3/31/78	0

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first working day thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

The above margins shall not change the current rates for cash deposits of estimated antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: February 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-4751 Filed 3-4-85; 8:45 am]

BILLING CODE 3510-05-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than March 31, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March, for the following periods:

Antidumping Duty Proceeding

Brass Fire Protection Equipment from Italy, 07/10/84-02/28/86
Monochrome and Color Television Receiving Sets from Japan, 03/01/85-02/28/86
Ferrite Cores from Japan, 03/01/85-02/28/86
Rayon Staple Fiber from Finland, 03/01/85-02/28/86
Rayon Staple Fiber from France, 03/01/85-02/28/86
Chloropicrin from the Peoples Republic of China, 03/01/85-02/28/86
Canned Bartlett Pears from Australia, 03/01/85-02/28/86
Sodium Nitrate from Chile, 03/01/85-02/28/86

Countervailing Duty Proceeding

Leather Wearing Apparel from Argentina, 01/01/85-12/31/85
Textile Mill Products and Apparel from Argentina, 12/21/84-12/31/85
Certain Castor Oil Products from Brazil, 01/01/85-12/31/85
Cotton Yarn from Brazil, 01/01/85-12/31/85
Frozen Concentrated Orange Juice from Brazil, 01/01/85-12/31/85
Certain Tool Steel Products from Brazil, 01/01/85-12/31/85
Certain Textile Mill Products and Apparel from Columbia, 03/12/85-12/31/85
Certain Iron-Metal Construction Castings from Mexico, 01/01/85-12/31/85
Certain Textile Mill Products from Mexico, 01/03/85-12/31/85
Cotton Shop Towels from Pakistan, 01/01/85-12/31/85
Certain Textile Mill Products and Apparel from Peru, 12/21/84-12/31/85
Ferrochrome from South Africa, 01/01/85-12/31/85
Certain Textile Mill Products and Apparel from Sri Lanka, 12/21/84-12/31/85
Certain Apparel from Thailand, 12/21/84-12/31/85
Certain Textile Mill Products from Thailand, 03/12/85-12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 21, 1986.

If the Department does not receive by March 31, 1986, a request for review of entries covered by an order or finding listed in this notice and for the period indentified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-4750 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Cold Rolled Steel Sheet and Strip; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.–EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the United States-Japan Arrangement Concerning Trade in Certain Steel Products with respect to high carbon, cold rolled sheet and strip for manufacturing measuring tapes.

EFFECTIVE DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377–3793.

SUPPLEMENTARY INFORMATION: The United States concluded a steel export restraint agreement with Japan on May 14, 1985, and on December 11, 1985 concluded an exchange of letters extending the 1982 U.S.–EC steel restraint agreement. Both Arrangements provide that, in cases where abnormal supply or demand factors demonstrate that the U.S. industry is unable to meet domestic demand for a particular product, an additional tonnage will be allowed for such product by a special license.

We have received a request for short supply for the following product imported from the EC and/or Japan:

EC

Cold rolled steel strip used to manufacture measuring tapes, conforming to general specification AISI C1095, in thicknesses ranging from .0045 to .0062 inch (+/−.0003 inch per size) and in a width of 6.3 inches.

Japan

Cold rolled steel sheet and strip used to manufacture measuring tapes, conforming to general specification AISI C1095, in thicknesses ranging from .0045 to .0062 inch (+/−.0003 inch per size) and in widths ranging from 6.3 inches to 12.4 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days after publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

The Department will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of this submission and also include with it a submission without proprietary information, which can be placed in the public file. The public file will be maintained in the Central Records Unit, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 27, 1986.

[FR Doc. 86–4769 Filed 3–4–86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Soliciting Competitive Financial Assistance Applications

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $200,000 for the project performance of 7/1/86 to 6/30/87. The MBDC will operate in the Jacksonville, FL Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $170,000 in Federal funds and a minimum of $30,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04–10–86008–01 for the Jacksonville, FL SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is desinged to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities

DATE: The closing date for applications is 4/4/86. Applications must be postmarked on or before 4/4/86.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia 30309, 404–347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 27, 1986.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be helf at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, on Friday, March 21, 1986, at 9 am.

[FR Doc. 86–4732 Filed 3–4–86; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

[Docket No. 51075-5175]

Proposed Federal Information Processing Standard Publication 29-2; Interpretation Procedures for Federal Information Processing Standard Programming Languages

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal information processing standard publication (FIPS PUB) 29-2.

SUMMARY: The purpose of this notice is to announce a proposed Federal Information Processing Standard Publication (FIPS PUB) 29-2, entitled "Interpretation Procedures for Federal Information Processing Standard Programming Languages". Proposed FIPS PUB 29-2 is a revision to FIPS PUB 29-1 which was published in 1981.

The proposed revision broadens the methods that NBS may use in developing interpretations to FIPS Programming Languages to include assistance by Federal Interpretation Committees, by committees of recognized standards bodies, and by recognized language experts.

Prior to the submission of this proposed revision to the Secretary of Commerce (Secretary) for review and approval, it is essential to assure that consideration is given to the needs and views of vendors of processors, the public, and State and local governments. The propose of this notice is to solicit such views.

DATE: Comments and proposals must be submitted on or before June 3, 1986.

ADDRESS: Written comments on this proposed revision or any alternative proposals should be submitted to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attn: Proposed FIPS PUB 29-2.

Written comments and proposals received in response to this notice will be made part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. James Hall, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: February 27, 1986.

Ernest Ambler,

Director.

Proposed Federal Information Processing Standards Publication 29-2

(date)

Interpretation Procedure for Federal Information Processing Standard Programming Languages

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Purpose.* The purpose of this Federal Information Processing Standards Publication (FIPS PUB) is to establish the procedures for requesting an interpretation of any of the Federal Information Processing Standards (FIPS) Programming Languages and for providing a solution to the request.

2. *Background.* The FIPS Programming Languages define the elements of the programming languages and the rules for their use. As the standards are used to implement processors, validate processors, or write source programs, questions may arise as to the meaning of certain language specifications. It is desirable to provide solutions to these questions that can be used uniformly throughout the Federal Government. In order to achieve this objective, the National Bureau of Standards will provide responses to questions of interpretation for the respective FIPS. To assist NBS in providing these responses, a variety of mechanisms may be used, including:

a. organization of a Federal Interpretation Committee (FIC) which will be responsible for providing a recommended interpretation for a particular language.

b. obtaining a recommended interpretation from a committee of the recognized standards body responsible for the development of the standard that has been adopted as a FIPS.

c. consultation with other recognized language experts.

3. *Approving Authority of Interpretations.* Director, National Bureau of Standards.

4. *Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

5. *Cross Index.*[1]

a. FIPS PUB 21, COBOL.

b. FIPS PUB 68, Minimal BASIC.

c. FIPS PUB 69, FORTRAN.

d. FIPS PUB 109, PASCAL.

e. Federan Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

6. *Implementing Schedule.* These procedures become effective on (date).

7. *Applicability.*

a. The provisions of this document apply to Federal departments and agencies and to vendors of processors that wish to have questions concerning specifications for FIPS Programming Languages resolved by the National Bureau of Standards.

b. Interpretations that are developed and approved as a result of employing these procedures apply to all processors for FIPS Programming Languages that are brought into the Federal inventory after the effective date that is specified with each interpretation.

8. *Procedures.* (In the following procedure, each reference to "Federal Interpretation Committee" (FIC) should be construed to mean the specific interpretation committee responsible for the language to which the request applies).

a. *Requesting an Interpretation.*

(1) Requests may be submitted by a vendor of a processor intended to conform to a FIPS Programming Language or by any department or agency of the Federal Government.

(2) Requests for an interpretation and the date by which the interpretation is desired should be submitted in writing to the National Bureau of Standards. See paragraph 9 for address.

b. *Processing a Request for Interpretation.*

(1) Upon receipt, the National Bureau of Standards will determine which of the following mechanisms will be used in developing a response to the request for interpretation:

(a) Organization of a Federal Interpretation Committee (FIC) which will be responsible for providing a recommended interpretation for a particular language.

(b) Obtaining a recommended interpretation from a committee of the recognized standards body responsible for the development of the standard that has been adopted as a FIPS.

(c) Consultation with other recognized language experts.

(d) Any combination of the mechanisms in (a) through (c) above.

(2) If the FIC is utilized:

(a) The request is distributed to the FIC.

(b) Position papers on proposed solutions to a cited problem may be submitted by any FIC member for consideration by the FIC membership.

(c) The requestor of an interpretation may be invited to attend the meeting at which the request will be considered, and to participate in the discussion of the problem identified by the request.

(3) If either the appropriate standards body or other recognized language experts is utilized, the request is sent to that body indicating the date by which an interpretation is desired.

(4) Upon completion of the proposed interpretation, the National Bureau of Standards will:

(a) Arrange for publication of the proposed interpretation in the Federal Register and forward it to Federal agencies for the purpose of soliciting comments from Federal agencies, vendors, and private industry.

(b) Notify requestor of the proposed interpretation.

(5) Comments received as a result of publication and review of the proposed interpretation will then be reviewed by the National Bureau of Standards and, if appropriate, the body specified in paragraph 8.b.(1), and a final interpretation developed.

[1] Refers to most recent revision of FIPS PUBS.

c. *Dissemination of an Approved Interpretation.*

(1) The National Bureau of Standards will be responsible for the dissemination of interpretations for the FIPS Programming Language.

(2) The approved interpretation will consist of the following information:

(a) Definition of the problem being resolved.

(b) Discussion of the issues relevant to the problem.

(c) Discussion of the solution to the problem (interpretation).

(d) Any necessary clarification to the FIPS Programming Language to effect the resolution.

(e) Effective date of the interpretation.

(3) The approved interpretation will be disseminated and will include, at a minimum, the following: publication in the **Federal Register**; letter to the Federal agencies; and letter to the requestor.

(4) The National Bureau of Standards will maintain a central register of approved interpretations for reference.

9. *Point of Contact.* The following address will be used for correspondence pertaining to FIPS Programming Language interpretations: Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

10. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 29-2 (FIPSPUB29-2), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, or deposit account.

[FR Doc. 86-4708 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting to review spiny lobster, shrimp, and stone crab fishery management plan amendments; discuss preliminary consideration of the total allowable catch for king and Spanish mackerel for the forthcoming fishing year; discuss management under the recently implemented coral regulations, as well as discuss personnel and other matters pertaining to Council operations.

The public meeting will convene March 12 at 8 a.m., and recess at 5:30 p.m.; reconvene March 13 at 8 a.m., adjourn at noon, and will take place at the **Harbour Island Hotel**, 725 Harbour Island Boulevard, Tampa, Florida. Committee meetings of the Council will be held on March 10–11. Personnel matters will be closed to the public during both Committee and Council sessions. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: February 27, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4757 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Cascadia Research Collective

On December 19, 1985, notice was published in the **Federal Register** (50 FR 51738) that an application had been filed by the Cascadia Research Collective, Waterstreet Building, 218½ West Fourth Street, Olympia, Washington 98501, to take marine mammals for scientific research.

Notice is hereby given to that on February 15, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: February 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4762 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 524]

Marine Mammals; Permit Modification; Connyland

Notice is hereby given that pursuant to the provisions of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and section C.4 of Public Display Permit No. 524 issued to Connyland, CH-8557 Lipperswil, Switzerland on September 26, 1985 (50 FR 40887), that Permit is modified as follows:

Section A is modified by adding: "2. The Permit Holder is authorized to take a fifth Atlantic bottlenose dolphin (*Tursiops truncatus*) by the means described in the application."

This modification became effective on February 25, 1986.

The permit, as modified and documentation pertaining to the modification are available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: February 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4763 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Dr. James H. W. Hain (P135B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name Dr. James H. W. Hain, Associated Scientists at Wood Hole, Inc.

b. Address Box 721, Woods Hole, Massachusetts 02543.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals, and Location of Activity: An unspecified number of cetaceans and pinnipeds (except walrus) will be taken from all parts of the world, principally the Continental Shelf Waters of the northeastern United States.

4. Type of Take: The proposed research consists of aerial, surface vessels, and underwater acoustic surveys and sampling, which may involve harassment to individual animals of the population stocks. The Applicant also requests authority to collect and import marine parts from dead animals found stranded or floating.

5. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator of Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR 86-4764 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Gerald L. Kooyman (P16G)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Gerald L. Kooyman, Physiological Research Laboratory A-004.

b. Address: Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Harbor seal (*Phoca vitulina*) 10; California sea lion (*Zalophus californianus*) 15.

4. Type of Take: From beached/stranded rehabilitated or captive born stocks to study respiratory functions.

5. Location of Activity: Scripps Institution of Oceanography and Pacific Ocean a short distance offshore from Scripps.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 25, 1986.

Richard R. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4765 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 21, 1986 at 9:00 a.m., at the New York Hilton Hotel, 1335 Avenue of the Americas, New York, New York 10019. Meeting Room information will be posted on the hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. Old Businesss
  A. Statistic on Tourism as Services Data
IV. New Business
  A. Bicentennial of the Constitution
  B. Statue of Liberty—Ellis Island Restoration Project
  C. Tourism and the Caribbean Basin Initiative
  D. Terrorism and Tourism
V. Miscellaneous
  A. Establish next meeting date
VI. Adjournment.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available,

the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 86–4701 Filed 3–4–86; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescinding the Call on Certain Man-Made Fiber Apparel Products in Category 638 Produced or Manufactured in China

February 28, 1986.

On July 16, 1985 a notice was published in the **Federal Register** (50FR 28833) announcing that the Government of the United States had requested the Government of the People's Republic of China to enter into consultations concerning exports to the United States of knit shirts of man-made fibers in Category 638 produced or manufactured in China.

The purpose of this notice is to announce that, pursuant to consultations with the Government of the People's Republic of China, the United States Government has agreed to withdraw the limit on this category at this time. Should it become necessary to discuss this category with the Government of the People's Republic of China at a later date, further notice will be published in the **Federal Register.** In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the import control limit previously established for this category.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

Committee for the Implementation of Textile Agreements

February 28, 1986

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of July 11, 1985 concerning imports of man-made fiber textile products in Category 638, produced or manufactured in China and exported during the twelve-month period which began on April 23, 1985 and extends through April 22, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86–4770 Filed 3–4–86; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Amendments Relating to the Soybean Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to amend Regulations 1180.01 and 1185.01 of the soybean oil futures contract. The proposal would amend the contract's minimum rates for loading into trucks and rail tank cars when load-out is requested by the holder of a warehouse receipt. The Director of the Division of Economic Anaylysis of the Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 4, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT Regulations 1180.01 and 1185.01.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7227.

In accordance with section 5a(12) of the Commodity Exchange Act 7 U.S.C. 71(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the Chicago Board of Trade relating to its soybean oil futures contract is of major economic significance. Accordingly, the primary proposed amendments are printed below with brackets indicated deletions and underlining indicating additions.

1180.01 Duties of Warehouse Operators—It shall be the duty of the operators of all regular warehouses:

* * * * *

(f) To ship oil ordered out by warehouses in Buyer's tank cars, [or otherwise as] *if so* arranged, [as promptly as possible but not later than three days after tank car is ready for loading (strikes excepted).] *and to begin loading out soybean oil on or before the third business day following the date the car is ready for loading or the receipt is cancelled, whichever occurs later, at a minimum daily rate per business day equal to the greater of either 2% of the total oil represented by warehouse receipts against which oil has not yet been loaded out against or the equivalent of four jumbo rail tank cars.*

All rail loading orders received prior to 2:00 p.m. on a given business day shall be considered dated that day and shall be entitled to equal treatment. Rail loading orders received after 2:00 p.m. on a business day shall be considered dated the following business day. When loading rail loading orders and shipping instructions received by a shipper prior to 2:00 p.m. on a given business day, as determined hereunder, cannot be completed on the third following business day, the shipper shall allocate daily loading against such loading orders as equitably as possible on a pro-rata-basis on subsequent business days. Loading against all truck orders scheduled for a given business day shall be completed before loading of any orders scheduled for a subsequent business day.

* * * * *

(i) *To ship oil ordered out of the warehouse in Buyer's tank truck, is so arranged,* [owner of warehouse receipt may order oil out by truck. Each warehouseman must designate daily truck loading with the registrar's office of the Chicago Board of Trade. The operator of a shipping plant issuing soybean oil warehouse receipts shall not be required to load each day] *and to load the oil in such manner at a daily rate per business day equal to the greater of eight trucks or 1% of the total oil represented by warehouse receipts against which oil has not yet been loaded* [more than a maximum of 50% of his daily truck loading capacity as

shown on warehouseman's application for regularity and approved by the Exchange].

* * * * *

(j) *Notwithstanding any other provisions of this Regulation, on days when both rail and truck are loaded, the warehouseman shall be required to load at a minimum daily rate equal to the greater of eight trucks and four jumbo rail cars or 2% of the total oil represented by warehouse receipts against which oil has not yet been loaded. If the effective minimum is 2% of the total oil represented by receipts against which oil has not been loaded out against, loading will be allocated between modes on a pro-rata basis except that: (i) a minimum of eight trucks and four jumbo rail cars must be loaded; (ii) no more than 1% of the total oil must be loaded by truck; and (iii) a minimum of 2% of the total oil less the amount loaded by truck must be loaded by rail.*

* * * * *

Also, Regulation 1185.01—Application for Declaration of Regularity—has been amended by deleting the requirement that regular facilities register a daily rate of truck loading.

The CBT has stated that the proposed amendments will be effective for all newly listed trading months following Commission approval.

Other materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033, K Street NW., Washington, DC 20581 by April 4, 1986

Issued in Washington, DC on February 28, 1986

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-4767 Filed 3-4-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows.

DATE: 25 March 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 28, 1986.

[FR Doc. 4805 Filed 3-4-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Summer Study on Mine Warfare; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Summer Study on Mine Warfare will meet in closed session on 25-26 March, 22-23 April, 13 May, and 26-27 June 1986 in the Pentagon, Arlington, Virginia. At these meetings the Summer Study will evaluate the Department of Defense land and over the beach mine warfare programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the Army's requirements for the LHX Helicopter.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: February 28, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4807 Filed 3-4-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 25, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Review of Air Force Current and Long-Term Responses to Hazardous Materials/Waste Issues will meet April 8-9, 1986 at the Pentagon, Room 5D982 from 9:00 a.m. to 5:00 p.m. each day. The purpose of the meeting will be to review Air Force use of hazardous materials as pertains to system development and acquisition

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 86-4738 Filed 3-4-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: Department of Education

ACTION: Notice of public meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. It also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

DATES: March 24, 1986, 9:00 a.m. to 5:00 p.m. and March 25, 8:30 a.m. to 3:00 p.m. local time. Requests for oral presentations before the Committee must be received on or before March 14 1986. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

ADDRESS: North 1, 2, 3, Sheraton National Hotel, 900 South Orme Street (Corner of Columbia Pike and Washington Boulevard), Arlington, Virginia 22204 (703) 521–1900.

FOR FURTHER INFORMATION CONTACT: Alfreda M. Liebermann, Acting Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3030, ROB–3), Washington, DC 20202 (202/245–9703).

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by section 1205 of the Higher Education Act as amended by Pub. L. 96–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting both recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs. The meeting on March 24–25 will be open to the public. The Advisory Committee will review petitions and interim reports by the following accrediting agencies relative to continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties. The agencies having petitions and interim reports pending before the Committee are:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Renewal of Recognition

Association of Independent Colleges and Schools, Accrediting Commission
Middle States Association of Colleges and Schools, Commission on Higher Education
New York State Board of Regents
Southern Association of Colleges and Schools, Commission on Colleges

B. Interim Reports

American Assembly of Collegiate Schools of Business, Accreditation Council
Council on Education for Public Health
Foundation for Interior Design Education Research Committee on Accreditation

C. Show Cause Why the Agency Should Not Be Removed From the Secretary's List of Nationally Recognized Accrediting Agencies

Foundation for Interior Design Education Research, Committee on Accreditation (graduate programs only)

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. Petitions for Renewal of Recognition

Minnesota State Board for Vocational-Technical Education
New York State Board of Regents

B. Interim Reports

Office of the Superintendent of Public Instruction, State of Washington
Oklahoma State Board of Vocational and Technical Education
Oklahoma State Regents for Higher Education
Puerto Rico State Agency for the Approval of Public Postsecondary Vocational/Technical Education

Petitions for Recognition as State Agencies for the Approval of Nurse Education

A. Petitions for Renewal of Recognition

Missouri State Board of Nursing
New Hampshire Board of Nursing Education and Nurse Registration
New York State Board of Regents (Nursing Education Unit)

B. Request for Voluntary Withdrawal of Recognition

West Virginia Board of Examiners for Registered Nurses Requests for oral presentations before the Committee should be submitted in writing to Alfreda M. Liebermann (address above). Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Requests should be received on or before March 14, 1986. Time constraints may limit oral presentations. However, all written materials will be considered by the Advisory Committee.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 3030, ROB–3), Washington, DC. from the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

Signed at Washington, DC, on February 28, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86–4699 Filed 3–4–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada, concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–CA–384, to the Universite du Quebec a Montreal, Montreal, Canada, 0.0996 grams of uranium, enriched to 99.8 percent in uranium-235 for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice. For the Department of Energy.

Dated: February 28, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc 86–4611 Filed 3–4–86; 8:45 am]

BILLING CODE 6450–01–M

Atomic Energy Agreements; Subsequent Arrangement Between United States, Canada, and Republic of Korea

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the

Republic of Korea concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement carried out under the above-mentioned agreements involves the retransfer of a UO_2 ceramic fuel bundle from the Korea Advanced Energy Research Institute to Atomic Energy of Canada, Ltd., for use in research in ceramic fuel fabrication technology. The fuel element contains 8,220 grams of uranium, enriched to 3.17 percent in U-235. This retransfer is designated as RTD/CA(KO)-1.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement is not inimical to the common defense and security.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Security for International Affairs and Energy Emergencies.

[FR Doc. 86-4813 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-137, for the transfer of 114.05 tonnes of uranium, enriched to an average of 3.56 percent in the isotope uranium-235, for use as fuel in the Forsmark and Ringhals power reactors in Sweden. The material is to be transferred from the URENCO uranium enrichment facilities in the European Community.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4812 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-JA-360, for the supply of 296.8 grams of natural uranium to the Japan Nuclear Fuel Conversion Co., Ltd., Tokyo, Japan, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4814 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and Mexico

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under general license issued by the U.S. Nuclear Regulatory Commission.

The subsequent arrangement to be carried out under the above-mentioned authority involves approval of the following sale:

Contract S-IA-140, to the Instituto de Geologia, Ciudad Universitaria, Delegacion Coyoacan, Mexico, 47.188 grams of natural uranium, and one gram of uranium depleted in the isotope U-235, for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4815 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and International Atomic Energy Agency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-IA-142, to the Institute for Nuclear Power Research, Bucharest, Romania, 148.8 grams of natural uranium, for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effort no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4816 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Procedures Governing Bonneville Power Administration; Rate Hearings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for Comments. *BPA File No:* APR-86-1.

SUMMARY: Consistent with section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i), and with recent decisions of the United States Court of Appeals for the Ninth Circuit, Bonneville Power Administration (BPA) is revising its procedures for rate hearings by amending existing rules, incorporating an interim rule on ex parte communications and including a new provision for expedited rate proceedings. The rule replaces the procedures found at 47 FR 6240 (February 10, 1982), and 49 FR 10980 (March 23, 1984). This is a rule of agency procedure within the meaning of section 553(b)(3)(A) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A). Accordingly, the rule becomes effective on March 7, 1986, for all rate hearings initiated on or after that date. BPA is accepting comments on these rules through April 4, 1986, and reply comments through April 21, 1986. BPA will revise the rule, if the comments domonstrate a need to do so.

Responsible Official: John Cameron, Assistant General Counsel, is the official responsible for this revision of procedures.

DATES: This rule is effective on March 7, 1986. Comments will be received through April 4, 1986. Reply comments will be received through April 21, 1986.

ADDRESSES: Written comments should be submitted to the Public Involvement Office, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. BPA File No. APR86-1 should be referenced in all comments.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Johnson, Public Involvement Office, at the address listed above, 503-230-p3478. Oregon callers outside Portland may use 800-542-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-457-6048. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm 376, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION

I. Background

Section 7(i) of the Northwest Power Act requires BPA to conduct a public hearing on the merits of BPA proposals to change a rate for power or transmission services. BPA's existing procedural rule for rate hearings is found at 47 FR 6240 (February 10, 1982). Experience gained under the rule has prompted BPA to clarify certain ambiguities and to incorporate certain procedures now left for ad hoc resolution by the hearing officer. Additionally, rulings by the United States Court of Appeals for the Ninth Circuit have clarified the requirements of section 7(i).

In *Central Lincoln PUD* v. *Johnson*, 735 F. 2d 1101 (9th Cir. 1984), the court held that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the APA, 5 U.S.C. 557(d). In response to the Court's ruling, BPA published an interim rule adopting an ex parte communication rule at 49 FR 10980 (March 23, 1984). It is BPA's understanding that the interim rule has worked to the satisfaction of its customers. Therefore, the new rule simply makes the interim procedures final.

In *Portland General Electric Company* v. *BPA*, 754 F.2d 1475 (9th Cir. 1985), and *California Energy Commission* v. *BPA*, 754 F.2d 1470 (9th Cir. 1985), the court held that rate hearings could be conducted on an expedited basis where delays might frustrate BPA's fulfillment of its statutory obligations. The PGE and CEC cases revealed that BPA's existing ratemaking procedures could be cumbersome and unduly protracted. Thus the new rule includes a procedure for expedited rate hearings, to be concluded within 90 days after they are initiated by a notice published in the Federal Register.

Under section 553(b)(3)(A) of the APA, "rules of agency organization, procedure, or practice" are exempt from notice and comment rulemaking procedures. 5 U.S.C. 553(b)(3)(A). In *Southern California Edison* v. *FERC*, 770 F.2d 779 (9th Cir. 1985), the court held that the Federal Energy Regulatory Commission rules establishing procedures for interim approval of BPA rates were agency procedural rules within the scope of the section 553(b)(3)(A) exemption. BPA finds that the instant rule is also a procedural rule exempt from notice and comment rulemaking procedures. Accordingly, the rule is effective as of March 7, 1986, for all hearings initiated on or after that date. However, because of BPA's commitment to informing and consulting with the public, BPA will accept comments and reply comments on this rule. Comments will be accepted until April 4, 1986. Reply comments will be accepted until April 21, 1986. Copies of any comments filed with BPA on this rule will be available upon request of BPA's Public Involvement Office. If comments and reply comments so warrant, BPA will revise this rule at a later date. In the meantime, waiver provisions in the new rule may be used by the Administrator to remedy any prejudice to hearing parties.

II. Summay of the Rule

A. Section 1010.1—Applicability

Section 1010.1 makes the rule applicable to rate hearings under Northwest Power Act section 7(i). However, section 1010.1(b) grandfathers the rule to exclude hearings initiated before March 7, 1986.

Section 1010.1(c) creates three exceptions. The first pertains to implementation of rates or rate formulae previously established in a hearing under section 7(i). Hearings are not required when the Administrator begins

to use an existing rate or replaces formula rate variables with constants to determine a price. However, BPA may conduct some informal proceeding on such actions. The second exception relates to instances where BPA may be required by statute or contract to decide whether a new rate or a rate change should be proposed. If, for example, BPA decides that implementation of a Northwest Power Act provision does not result in any rate change, no hearing need be conducted. The third exception relates to contract negotiation. The exception is explained in section 1010.2(j): "A rate may be set forth in a contract; however, other portions of a contract do not thereby become part of the rate for purposes of this rule." BPA will not conduct rate hearings on all matters before the agency, just because they might bear some relationship to rates.

Paragraph (d) allows the Administrator flexibility consistent with the law to adopt alternative procedures, or waive application of a procedure, as necessary for a fair and expeditious hearing.

B. Section 1010.2—Definitions

Section 1010.2 defines terms used in the rule. Definitions should be familiar to persons who have participated in BPA hearings. The definition of "legal issue" clarifies the fact that rate hearings provide a forum for allegations that a proposed rate would be inconsistent with any contractual right or obligation.

C. Section 1010.3—Initiation of Hearing

This section provides for **Federal Register** notice of proposed rates as required by section 7(i)(1) of the Northwest Power Act. Notice pursuant to this section requires the Administrator to specify information that was previously required under BPA's procedural rules, plus (1) designation of either provisions for general rate proceedings or expedited rate proceedings, (2) designation of a prehearing conference date, and (3) specification of the date on which the Administrator's final record of decision will be issued.

These additional notice requirements are intended to apprise parties and participants of the nature of a hearing and to ensure a more timely and orderly hearings process.

D. Section 1010.4—Intervention

This section clarifies rules for intervening as a party and for opposing any petition for intervention in BPA rate proceedings. Previous intervention rules provided less guidance to the hearing officer in ruling on petitions for interventions, oppositions to petitions, and late interventions. This section is intended to afford opportunity for BPA's customers and customer groups, and others who have a demonstrable interest in the hearings, to participate in a meaningful fashion. At the same time, this section is intended to give the hearing officer more discretion in acting on interventions, in protecting the interests of all parties, and in maintaining an expedited hearing schedule.

Paragraph (b) of this section requires all petitioners to state their interests in the proceeding. Petitioners whose rates are subject to revision should so specify in their petition for intervention. Petitioners whose rates are not subject to revision are required to state with specificity their interest in the hearing process, in order to enable the hearing officer to make a determination. This requirement will also give BPA more notice of particular issues to be raised in the hearing.

Paragraph (c) of this section specifies the time within which petitions to intervene must be filed. This paragraph is intended to discourage untimely interventions. Accordingly, this paragraph provides the hearing officer criteria with which to determine whether to grant an untimely intervention. Untimely interventions will not be granted by the hearing officer except when in his determination the untimely petition meets the criteria specified in paragraph (c). Paragraph (d) specifies that any petitioner for intervention and any party may oppose any petition for intervention.

Paragraph (e) of this section clarifies that participants will not have the rights and duties accorded parties. For example, participants will not have the right to cross-examine or seek discovery. Neither will participants be subject to discovery of the parties.

E. Section 1010.5—Participation

Section 1010.5 provides that persons wishing to comment on any proposed rate matter may do so by submitting written comments or by commenting orally in field hearings when convened by the Administrator. Participants may submit comments without being subject to the duties of and having the privileges of parties who have intervened under section 1010.4 of this rule. However, participants may be questioned by BPA staff at field hearings, when questioning is necessary to clarify positions taken in comments.

F. Section 1010.6—Prehearing Conference

This section expressly requires the hearing officer to establish hearing schedules consistent with this rule and with any additional requirements noticed by the Administrator in the FEDERAL REGISTER notice. However, the section allows the hearing officer sufficient discretion to implement a hearing schedule that ensures development of a full and complete record, consistent with fairness to the parties.

Paragraph (d) of this section requires the hearing officer to consolidate parties with similar interests into groups, when in his determination such consolidation will contribute to an expeditious proceeding. This paragraph is intended to facilitate a process without unnecessary duplication of testimony, cross-examination and briefing.

G. Section 1010.7—Ex Parte Communications

Section 1010.7 is adopted for the reasons stated in 49 FR 10980 (March 23, 1984). This section contains a general rule prohibiting ex parte communication regarding any matter pending before BPA in a hearing conducted pursuant to this rule. It is intended to ensure that the Administrator's decision is based upon a publicly developed record to which all parties and participants have had an opportunity to participate, rebut or challenge. Essentially, the provision is a verbatim recital of the interim rule, which has worked effectively for the last two years.

The section contains express exceptions to the general rule. These exceptions clarify the scope of an ex parte communication.

Paragraph (c) specifies that the rule against ex parte communications will apply either when **Federal Register** notice is published or when a person has knowledge that a **Federal Register** notice will be published.

Paragraphs (d), (e), and (f) of this section prescribe procedural safeguards that BPA will take to ensure that ex parte communications do not occur, and to the extent they do occur, are documented and excluded from the formal record. Paragraph (g) provides an opportunity for any person to rebut any contention contained in an ex parte communication.

H. Section 1010.8—Discovery

Section 1010.8 governs the scope of discovery in a rate hearing. Paragraph (b) specifies that discovery may be made through written data requests served on counsel for a witness or party.

Paragraph (c) provides that when the hearing officer schedules transcribed clarification sessions for prefiled testimony, parties must serve data request relating to that testimony one business day prior to the scheduled clarification sessions. This paragraph allows witnesses the option of responding to such requests orally at the transcribed session, or responding in writing. Paragraph (h) provides that parties wishing copies of written data responses request such information from the party answering the request. These paragraphs are intended to streamline clarification and data requests to reduce paper flow wherever possible.

Paragraphs (d)–(e) govern discovery disputes that may arise. The hearing officer is granted discretion to rule on or mediate any dispute to the extent consistent with this rule and other applicable law. Paragraph (f) grants the hearing officer discretion to make in camera inspection or grant protective orders to the extent necessary to protect information that has been shown to be privileged or proprietary. In addition, paragraph (g) provides remedies available to the hearing officer should any party refuse to comply with an order compelling production or discovery. These paragraphs are intended to promote full and fair discovery, but protect parties and BPA from unduly burdensome discovery or public dissemination of matters of a proprietary or privileged nature. The withholding party must demonstrate the legitimacy of any claim that information is proprietary or privileged.

I. Section 1010.9—General Rate Proceedings

Section 1010.9 provides that a general rate proceeding is one in which the Administrator proposes to revise all or substantially all rates, and where expedited rate proceedings are not selected by the Administrator.

J. Section 1010.10—Expedited Rate Proceedings

This section governs rate proceedings where the Administrator has elected in § 1010.3 notice to conduct an expedited rate hearing. This rule provides that an expedited proceeding will be completed within 90 days of § 1010.3 Federal Register notice. This section is intended to provide the Administrator with a mechanism for expedited rate hearings, where the Administrator has determined, among other things, that delays could significantly harm BPA's ability to satisfy its statutory obligations, and that expeditious implementation of new or revised rates is consistent with any contractual limitations. Discretion is left to the hearing officer to implement, consistent with the requirement of this rule, procedures necessary to enable the parties and BPA to develop a record. Only the hearing officer is authorized to request extensions of the 90-day period. Such requests may be made only when the parties demonstrate to the hearing officer's satisfaction that an extension is warranted. Any decision to extend is left to the sole discretion of the Administrator.

K. Section 1010.11—Testimony and Exhibits

Section 1010.11 governs the submission into the record of direct and rebuttal testimony of the parties. This section is intended to streamline submission of testimony and exhibits, and limit admission of unreasonably long or repetitious testimony and exhibits.

Paragraph (a) of this section is the general rule that testimony will be written, but oral testimony may be taken by leave of the hearing officer. Paragraph (a)(4) requires the hearing officer to reject exhibits or other documentation of excessive length, but allows parties to submit for the record excerpts and summaries of documentation and exhibits that have been rejected by the hearing officer under the terms of this paragraph. Paragraph (g) provides the hearing officer with the ability to reject all or part of testimony or exhibits not submitted in accordance with section 1010.11. Previous rules offered neither guidelines nor sanctions for the hearing officer to use in developing a full record unencumbered by repetitious material.

Paragraph (b) allows the hearing officer to designate documents from other BPA rate proceedings as items by reference. Items by reference will not physically become part of the record of the ongoing rate hearing unless the hearing officer so orders. Paragraph (c) allows the Administrator or the hearing officer to take official notice of any matter that would properly be the subject of official notice in federal courts, and also of any matter about which BPA is expert. This paragraph is intended to expedite the hearing process by taking official notice of undisputed facts.

Paragraph (e) provides parties and BPA the opportunity to move to strike testimony and exhibits when not in compliance with these rules or other applicable laws. This paragraph also clarifies that a party who has moved to strike may not answer the response of the party against whom the motion was made. This should encourage moving parties to state with particularity the reasons for the motion, and is intended to decrease the amount of paperwork involved with motions to strike.

L. Section 1010.12—Hearing

This section clarifies rules for testifying in panels and for cross-examination. Paragraph (a) provides that witnesses may testify in a panel. This does not change existing practice. However, paragraph (a) also specifically permits any panel witness to respond to a cross-examination question, provided the witness has submitted qualifications and is under oath.

Paragraph (b) empowers the hearing officer to limit excessive and irrelevant cross-examination. Previous rules provided little guidance to the hearing officer to oversee cross-examination. This paragraph provides the hearing officer discretion to (1) require cross-examination be completed within a reasonable time, (2) appoint lead counsel to conduct cross-examination of witnesses when the parties have substantially similar interests, and (3) limit friendly cross.

Paragraph (c) governs use and admission of cross-examination exhibits. Subparagraph (c)(1) merely recites the current practice that copies of cross exhibits be provided to the hearing officer and to witnesses' counsel. Subparagraph (c)(2), however, specifies that cross-examination exhibits containing material not offered as evidence must clearly designate which material is offered as evidence and which material is excluded. This is intended to clarify the record and streamline cross-examination.

Paragraph (d) grants the hearing officer the discretion to receive stipulations on any issue of fact. Stipulations are intended to further simplify proceedings wherever possible. Paragraph (e) merely specifies that all matters not otherwise governed by this rule are left to the discretion of the hearing officer.

M. Section 1010.13—Briefs

Section 1010.13 governs submission of briefs. Paragraph (c) provides that initial briefs should identify legal, factual, and policy issues to be resolved by the Administrator, and specify the parties' position on each issue. Paragraph (d) provides for the submission of briefs on exceptions, for the purpose of responding to errors in the Administrator's draft record of decision or providing additional support for a position. Paragraph (d) changes the characterization of the second brief from

a "Reply Brief" to a "Brief on Exceptions," to more accurately reflect the purpose the second brief.

Paragraph (a) states general rules applicable to all briefs. This paragraph specifically prohibits the practice of attaching to briefs or incorporating by reference into briefs materials not admitted into evidence by the hearing officer. This paragraph is intended to end a past practice which has had the effects of unnecessarily creating additional motions practice for the hearing officer long after the formal record has closed and further unnecessarily cluttering the record. This rule should also encourage parties to submit for the record all evidentiary and other matters during the regular course of the hearing. Paragraph (e) requires the hearing officer to reject any brief not in accordance with these rules.

Paragraph (b) requires parties to fully raise and develop their position on any issue, or else be deemed to take no position on that issue. Arguments not raised are deemed waived. This paragraph is intended to encourage the fullest development of the record possible at the appropriate time and to prevent after-the-fact raising of questions to which the Administrator could have responded had the issues been timely raised.

N. Section 1010.14—Oral Argument

Self explanatory.

O. Section 1010.15—Service of Documents

This section is intended to clarify rules of service applicable during rate hearings. This section requires that copies of all documents, including motions, briefs, pleadings, testimony, and decisional documents be served on all parties to the service list compiled by the hearing officer pursuant to section 1010.6. This paragraph also limits the number of persons upon whom service is to be made, except that the Administrator may designate additional persons upon whom service will be made.

P. Section 1010.16—Record of Decision

This section merely restates the requirements of section 7(i)(5) of the Northwest Power Act that the Administrator make a final decision, including a full and complete justification for the final proposed rates. This section additionally requires the Administrator to serve all parties with and make available to participants a copy of the draft record of decision and the final record of decision.

III. Authority: Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(i); Administrative Procedure Act, 5 U.S.C. 533–557.

In consideration of the foregoing, BPA amends its procedural rules for hearings under Northwest Power Act section 7(i) as set forth below.

Issued in Portland, Oregon.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

February 20, 1986.

Bonneville Power Administration, United States Department of Energy, Rules of Procedure Governing Rate Hearings

Section 1010.1 Applicability

(a) *General Rule.* This rule applies to all proceedings conducted under the procedural requirements for ratemaking contained in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i). On determining that new or revised rates may be needed to satisfy fiscal or other statutory obligations of Bonneville Power Administration (BPA), the Administrator may initiate a hearing in accordance with this rule to develop a full and complete record on proposed rates.

(b) *Transitional application.* This rule applies only to rate hearings initiated on or after March 7, 1986. All hearings initiated prior to that date shall be conducted pursuant to the "Procedures Governing Bonneville Power Administration Rate Adjustments," 47 FR 6240 (February 10, 1982). Rate hearings are initiated as provided in § 1010.3 of this rule.

(c) *Exceptions.* This rule does not appy to:

(1) Proceedings regarding implementation of rates or formulae previously adopted by the Administrator and approved, on either an interim or final basis, by the Federal Energy Regulatory Commission,

(2) Proceedings required by statute or by contract, in which the Administrator does not propose any new rate, formula rate, discount, credit, surcharge or other rate change, or (3) negotiation of, or the receipt of public comment on, any contract, except for provisions which satisfy the definition in § 1010.2(j).

(d) *Waiver.* To the extent permitted by law, the Administrator may waive any section of this rule of procedure or prescribe any alternative procedures he determines to be appropriate.

Section 1010.2 Definitions

(a) "Administrator" means the BPA administrator or the acting administrator or, for the purpose of § 1010.7. the hearing officer.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Draft Record of Decision" means the document, issued by BPA after the submission of initial briefs, which identifies each issue BPA will resolve in the pending rate hearing; summarizes the factual, legal and policy arguments presented by BPA and the parties on each issue; and sets forth the Administrator's tentative decision on each issue.

(d) "Ex Parte Communication" means an oral or written communication

regarding the merits of any issue pending in a hearing conducted pursuant to Northwest Power Act section 7(i) which is not on the record and with respect to which reasonable prior notice to parties has not been given, but it shall not include request for status reports on any hearings.

(e) "Hearing Office" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act section 7(i)(2).

(f) "Legal Issue" includes any issue grounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing of the propriety of a rate proposed by BPA or any party.

(g) "Participant" means any person submitting for the record oral or written comments pursuant to § 1010.5 on a rate proposed by the Administrator.

(h) "Party" means any person whose intervention is effective under § 1010.4.

(i) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, a state, any agency, department, or instrumentality of a state, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(j) "Rate" means the monetary charge, discount, credit, surcharge, pricing formula, or pricing algorithm for any electric power or transmission service provided by BPA, including charges for capacity and energy. However, the term does not include transmission line losses, leasing fees, facility-use charge other than for BPA transmission services, or charges for operation and maintenance of customer-owned facilities. A rate may be set forth in a contract; however, other portions of a contract do not thereby become part of the rate for purposes of these rules.

(k) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, draft record of decision and record of decision certified by the hearing oficer.

Section 1010.3 Initiation of Hearing

A hearing on the Administrator's proposal to establish or revise the rate for any power or transmission service shall be initiated on the day a notice of BPA's initial rate proposal is published in the **Federal Register**. The notice shall:

(a) Specify the proposed rates and summarize any studies, analyses, or other available information that BPA intends to use in the hearing to justify the proposed rates,

(b) Establish a deadline for filing petitions to intervene,

(c) State whether the hearing will be conducted under the rule for general rate proceedings § 1010.9, or the rule for expedited rate proceedings § 1010.10, together with a statement of reasons for the Administrator's choice between the two rules,

(d) Establish a date on which the hearing officer will conduct the prehearing conference,

(e) Specify the date on which the Administrator will issue the record of decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing, and

(f) Provide other information which the Administrator determines to be pertinent to the hearing.

Section 1010.4 Intervention.

(a) *Filing.* A person seeking to become a party in a rate hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APR.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.* (1) Petitions must be filed within the time specified in the § 1010.3(b) notice for the hearing in question.

(2) Late interventions are strongly disfavored. Granting an untimely petititon to intervene must not be a basis for delaying or deferring any procedural schedule. A later intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) The petitioner has a good reason for filing out of time,

(ii) Any disruption of the proceeding might result from allowing a later intervention,

(iii) The petitioner's interest is adequately represented by existing parties, and

(iv) Any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within two days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in §§ 1010.6, 1010.8–1010.15 are available only to parties, and are not available to participants.

Section 1010.5 Participation

Any person, who is not a party, may become a participant by submitting written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comment. Written comments must be submitted to the BPA Public Involvement Office. The hearing officer may allow reasonable questioning of participants by BPA counsel.

Section 1010.6 Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's **Federal Register** notice. During the conference, the hearing officer shall:

(a) Act on all intervention petitions.

(b) Establish any special rules of procedure the hearing officer considers appropriate, provided that such special rules conform to BPA's rules of procedure governing rate hearings,

(c) Establish a service list,

(d) Establish a procedural schedule for the entire hearing, and

(e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

Section 1010.7 Ex Parte Communications

(a) *General Rule.* Except as permitted in paragraph (b) of this section, no party or participant in any hearing shall submit ex parte communications to the Administrator or any BPA employee regarding any matter pending before BPA in the hearing. Neither shall the Administrator nor any BPA employee request or entertain such ex parte communications.

(b) *Exceptions.* The prohibitions contained in paragraph (a) of this section do not apply to a communication:

(1) Relating to matters of procedure only;

(2) From a person when otherwise authorized by law or other portions of these procedures;

(3) From or to the Federal Energy Regulatory Commission after coordination with BPA consel;

(4) Which all parties agree may be made on an ex parte basis;

(5) Relating to exchanges of data in the ordinary course of business, data required to be exchanged pursuant to contracts, or data which would be available pursuant to Freedom of Information Act requests;

(6) Which relates solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with BPA during a hearing and which is made in the presence of or after coordination with BPA counsel; or

(7) Which relates to a topic that is only secondarily the object of a hearing, for which BPA is statutorily responsible under provisions other than Northwest Power Act section 7, or which is eventually decided other than through a section 7(i) hearing.

(c) *Application.* The prohibitions contained in this section shall apply from the day on which BPA publishes the **Federal Register** notice specified § 1010.3, or the person responsible for such communication has knowledge that a notice will be published.

(d) *Notice of meetings.* BPA will give reasonable public notice of any meeting which BPA intends to hold with any customer group or member of the public when it reasonably appears that matters of substance relative to the merits of a section 7(i) hearing will be discussed. For any such meeting held individually with customers, customer groups, and others, BPA will prepare a memorandum reciting the date of the meeting, persons in attendance, and a summary of issues discussed and positions taken. This memorandum will be placed in an ex parte file separate from the material upon which the Administrator relies in reaching a decision. This file will be available for review through BPA's Public Involvement Office.

(e) *Written materials.* Any written material received by the Administrator or BPA staff which would otherwise be subject to the prohibition of paragraph (a) of this section automatically will be placed in the ex parte file identified in paragraph (d) of this section.

(f) *Oral communications.* The Administrator or any BPA employee who receives an oral offer of any communication prohibited by paragraph (a) of this section shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he or she will not consider the communication. The recipient shall prepare a statement setting forth the substance of the communication and the circumstances thereof within 48 hours and deliver the statement to BPA's Office of General Counsel. BPA's Office of General Counsel must deliver these statements to the hearing officer who will serve copies on parties to the proceedings. The hearing officer will also serve a copy of the statements to the communicator and allow him or her a reasonable opportunity to file a response.

(g) *Rebuttal.* Requests for an opportunity to rebut, on the record, any facts or contentions contained in either ex parte communication or in a memorandum prepared pursuant to paragraph (d) of this section should be filed with the hearing officer. The hearing officer will grant such requests only where the dictates of fairness so require.

Section 1010.8 Discovery

BPA and the parties to any rate hearing may engage in discovery, and be subject to discovery requests, according to the following rules:

(a) *Informal requests.* Prior to initiation of a rate hearing, information concerning BPA rates may be requested by making a written request through BPA's Office of General Counsel/APR.

(b) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. BPA or any party may request data in hard copy or computer tape, studies, or admissions; however, no party shall be required to perform any new study or to run any analysis or computer program. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served only on counsel for the requesting party.

(c) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to participate in clarification of a withnesses' testimony serve all data requests pertaining to that testimony at least one business day prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (b) of this section.

(d) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(e) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolve the objection informally with the objecting party. Motions to compel must be made within the time specified in the procedural schedule.

(f) *Privileged Information.* The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(g) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) Striking the testimony or exhibits to which the question or request relates, or

(2) Limiting discovery or cross-examination by the party refusing to answer or respond, or

(3) Recommending to the Administrator that an appropriate adverse infrerence be drawn against the party refusing to answer or respond.

(h) *Copies.* Any party wishing copies of data responses should request them from the party submitting the response.

Section 1010.9 General Rate Proceedings

(a) *General rule.* a general rate proceeding is a hearing on the Administrator's proposal to revise all, or substantially all, of BPA's power and transmission rates in instances where the Administrator does not utilize the

procedures in § 1010.10 for an expedited rate proceeding. The hearing officer may establish the procedures and conduct hearings, consistent with this rule, as necessary to develop a full and complete record and to receive public comment and argument related to the proposed rates.

Section 1010.10 Expedited Rate Proceedings

(a) *General Rule.* The record of decision in rate hearings conducted under this section shall be issued within 90 days after notice is issued under § 1010.3, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures or special rules necessary to satisfy the Administrator's expedited schedule.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the 90-day hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within four days thereafter.

(c) *Special procedure.* Oral argument will not be heard in expedited rate proceedings, unless all parties agree to substitute oral argument for a brief on exceptions.

Section 1010.11 Testimony And Exhibits

(a) *General Rule.* (1) Parties shall be provided an adequate opportunity to offer refutation or rebuttal on any material submitted by any other party or by BPA. Except as provided in § 1010.5, witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which exclude irrelevant or redundant material.

(b) *Items by reference.* Testimony, exhibits, or studies from other BPA rate hearings may be designated as items by references in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Official notice.* The administrator or the hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of participants.* Testimony and comments received pursuant to § 1010.5 shall be compiled in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

Section 1010.12. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-examination.* (1) Cross-examination shall be limited to issues relevant to the proposed rates or to issues identified in a statement of issues adopted by the hearing officer. The hearing officer may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz*, friendly cross-examination.

(c) *Cross-examination exhibits.* (1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witnesses' counsel.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

Section 1010.13. Briefs

(a) *General rule.* Briefs shall be filed at times specified by the hearing officer in the procedural schedule. All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Waiver of issues or arguments.* Parties whose briefs do not raise and fully develop their positions on any issue shall be deemed to take no position on such issue. Arguments not raised are deemed to be waived.

(c) *Initial brief.* At the conclusion of the evidentiary portion of a hearing, the hearing officer shall allow each party to submit any initial brief. The purpose of an initial brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The initial brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(d) *Brief on exceptions.* After issuance of BPA's draft record of decision, each party may file a brief on exceptions. The purposes of the brief on exceptions are to: (i) Raise any alleged legal, policy, or evidentiary errors in the draft record of decision, or (ii) provide additional support for tentative decisions contained in the draft record of decision. Alleged errors not raised in briefs on exceptions shall be deemed waived.

(e) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

Section 1010.14. Oral Argument

An opportunity for parties to present oral argument may be provided at the discretion of the Administrator, except as limited by § 1010.10(c).

Section 1010.15. Service of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under § 1010.6, service on parties may be made by service on BPA General Counsel/APR. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons upon whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by § 1010.8 (b) and (h).

Section 1010.16. Record of Decision

Based on the entire hearing record, the Administrator shall make a decision adopting final proposed rates for submission to the Federal Energy Regulatory Commission for confirmation and approval. The record of decision shall include a full and complete justification for the final proposed rate or rates. The Administrator shall promptly serve copies of the record of decision on all parties to the proceeding. Copies of the record of decision will be made available to participants through BPA's Public Involvement manager.

[FR Doc. 86-4713 Filed 3-4-86; 8:45 am]
BILLING CODE 6450-01-M

Fall River-Lower Valley Transmission System Reinforcement; Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy, Bonneville Power Administration, proposed to build 161-kV transmission facilities from Goshen Substation to Drummond Substation in southeastern Idaho. The proposal was based on a need to maintain reliable service to electrical loads in the Targhee, Drummond, Palisades, West Yellowstone, and Teton areas.

Several alternatives were studied to meet the need. The alternatives, including the proposed Goshen-Drummond plan, were analyzed in the October 1985 Final Environmental Impact Statement (EIS) titled "Fall River-Lower Valley Transmission System Reinforcement." The EIS was prepared by BPA. The Bureau of Land Management (BLM) and the Forest Service (FS) participated as cooperating agencies. The Bureau of Reclamation (BOR) also participated in project development.

This Record of Decision (ROD) describes BPA's decision to build a 73-mile 161-kV transmission line from Goshen Substation southwest of Idaho Falls to Drummond Substation near Ashton, Idaho.

Decision

The Bonneville Power Administration has decided to construct the Fall River-Lower Valley 161-kV transmission line following the proposed alternative (Goshen-Drummond) identified in the draft and final EIS's.

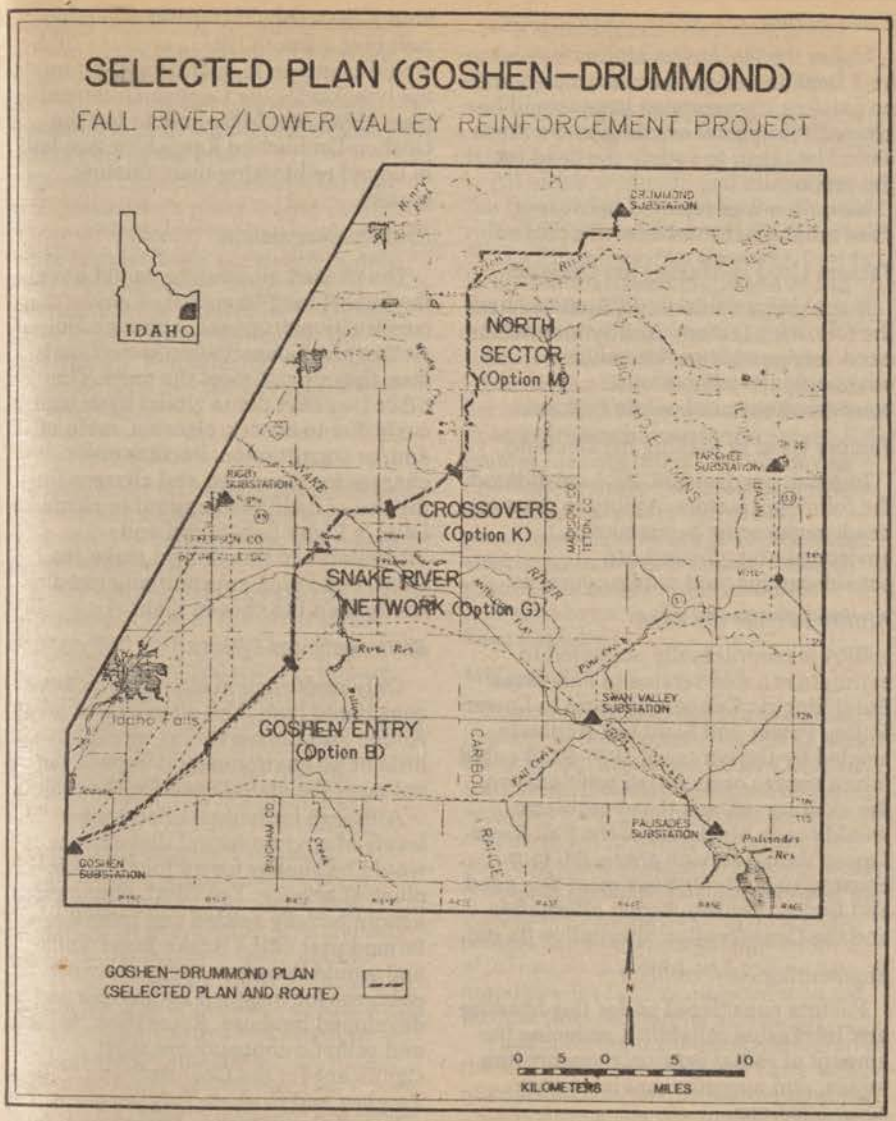
SUPPLEMENTARY INFORMATION:

Selected Alternative

A new 73-mile 161-kV line will be built from Goshen Substation (15 miles southwest of Idaho Falls) to Drummond Substation (east of Ashton, Idaho) (see map). Two 115-kV power circuit breakers will be added at Drummond Substation. The 161-kV line will operated initially at 115-kV. Later (1992) a 161/115-kV transformer will be added at Drummond Substation. An additional 115-kV circuit breaker will be required at Goshen Substation until the line is converted to 161-kV. Upon energization, BPA may transfer to Utah Power and Light Company (UP&L) ownership of approximately one-half of the transmission line (from Goshen Substation to the Snake River). This transfer would be in exchange for favorable system wheeling rates and would be part of a power sales contract currently being negotiated between BPA and UP&L.

The line will cross approximately 1/2 mile of BLM land at the Snake River and approximately 1/4 mile of BOR land at the Teton River Crossing. Procedures for obtaining land use grants from these agencies will be undertaken when location and design details have been finalized.

Goshen-Drummond was selected from among four construction alternatives. Because all four alternatives could create impacts that would be similar in nature, intensity, or significance, no one plan was considered to be environementally preferable. However, within the Goshen-Drummond alternative, the following route and design options were selected because they have the least impact of all Goshen-Drummond options. As noted below, they are part of the mitigation adopted for the selected plan.



The Goshen-Drummond plan was divided into four geographic sectors, for ease of discussion. From south to north, they are: The *Goshen Entry*, the *Snake River Network*, the *Crossovers*, and the *North Sector* (see map). The selected route, design, and mitigation options for each sector are:

Goshen Entry—Option B

Twenty miles of existing 161–kV line out of Goshen Substation will be torn down and replaced with double-circuit construction as mitigation. Because it uses the existing right-of-way, double-circuit costruction will have less impact on residences and irrigated farmland than the alternative of building a parallel line.

Snake River Network—Option G

The line will leave the existing line's path west of Ririe Reservior and head north, primarily along country roads. It will cross the southeast corner of the town of Ririe and will cross the Snake River near the Union Pacific Railroad trestle. The selected option G avoids the serious conflicts with agriculture and residences that some other alternatives would have. It also has less effect on esthetics, recreation, wildlife, and soils than some other options. On balance, it would have the least environmental effect of the seven options considered for this sector.

Construction will be entirely on single wood-pole structures on option G to minimize conflict with cultivated land and other developed land uses, as these structures take less space than H-frames.

The route relocation on the eastern side of the town of Ririe was selected as mitigation to reduce effects on agricultural operations and residences.

A cultural resources survey for the Heise-Thornton Road, followed by mapping and photographing of any remaining unaltered portions, will reduce overall impact; any portions determined eligible for National Register listing would be avoided.

Crossovers—Option K

Past the river, the line will head northeast, largely through wooded terrain. The standard H-frame structures will be used in most areas. Option K was chosen because it proved possible to locate the line on the farm/forest margins, avoiding impacts on wildlife. It also avoids the greater impacts on agriculture characteristic of the other crossover.

North Sector—Option M

The line will cross Moody Creek, then continue north, primarily along existing roads in order to minimize effects on cultivated land. Just north of the Teton Dam Site, it will turn east for about 11 miles to Drummond Substation. Single-pole structures are proposed for most cultivated areas. H-frames will be used elsewhere. Option M avoids the impacts of the other option in this sector on big game, on fisheries, on soils and vegetation, and on irrigated land. Option M effects on these resources are less severe or more mitigable. Although Option M crosses more miles of irrigated agriculture than the alternative option, a good system of roads parallels the route, reducing access road needs and allowing pole placement near road edges, thereby reducing disturbance and interference with both wildlife and agriculture.

A route adjustment north of the Teton River has been selected to avoid interfering with existing and planned circle irrigation systems for about 2 miles.

A route adjustment into Drummon has been selected to avoid building parallel to existing lines, except for the last ½ mile.

Alternatives

In arriving at a decision, BPA evaluated a number of alternatives to the Goshen-Drummon plan. These included three electrical plans of service, Conservation in-lieu-of construction, and No Action. In these evaluations, BPA considered the following factors: ability to meet the

need, engineering performance, environmental effects, cost considerations, and public concerns. Following is a brief description of each alternative and the reasons it was not selected.

A. Goshen-Targhee Plan

The area's system could be reinforced by building a mostly parallel 161-kV line along the present Swan Valley-Goshen line to Swan Valley Substation, then into Targhee Substation, for a distance of 75 miles.

This alternative was rejected because it cost the most and did not perform as well as Goshen-Drummond from an electrical or maintenance standpoint.

B. Goshen-Swan Valley-Targhee Plan

The area's system could also be reinforced by rebuilding the Palisades-Goshen 115-kV line. One option would be to rebuild it to double-circuit 161-kV (or to build a new parallel line) for 38 miles to Swan Valley. Another option would be to upgrade the existing line to 161-kV. Either option would be followed later by construction of a parallel 161-kV line from Swan Valley to Targhee.

This alternative was rejected because it cost more and would not perform as well as Goshen-Drummond from an electrical or maintenance standpoint.

C. Other-Utility-Build

Utah Power and Light Company (UP&L) could construct a 43-mile 161-kV transmission line from their Rigby Substantion to Drummond. Within a few years, they would also reinforce their facilities at Rigby Substation form their Bonneville Substation or Jefferson Substantion to the west, and still later they would reinforce the system from Goshen to Rigby to avoid overloads. Although these actions would be undertaken without a Rigby-Drummond line, building this line would accelerate their timing.

This alternative was rejected because: (1) It costs substantially more over the long term; and (2) it offers fewer benefits towards operation, maintenance and reliability of service on facilities serving the area customers.

D. Conservation In-lieu-of Construction

This alternative would involve developing programs to conserve enregy or manage loads, in addition to current weatherization and irrigation conservation programs in the area.

Conservation as an alternative was rejected because it does not meet the need for the project.

E. No Action.

Under the No Action alternative, no new facilities would be constructed and no existing transmission lines would be altered. No special or additional actions would be taken to satisfy the need for the proposal.

No action was rejected because it does not meet the need for the project.

Factors Used in Making the Decision

In making a decision, BPA considered the following factors: Ability to meet the need, engineering performance, environmental effects, cost considerations, and public concerns.

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In making a decision, BPA considered the following factors: Ability to meet the need, engineering performance, environmental effects, cost considerations, and public concerns.

Ability to meet the need

BPA is contractually obligated to maintain reliable service to Fall River Rural Electric Cooperative and to Lower Valley Power and Light Co. Action is needed by the winter of 1988-89 to avoid future outage or overload problems on the existing system; those problems would cause blackouts of the Fall River-Lower Valley service areas. All four construction alternatives meet this need and timing. The No Action alternative and the Conservation alternative do not.

Engineering Performance

Factors considered under this heading are: Increasing reliability, reducing the amount of radial service, reducing line losses, and operation/maintenance considerations.

Goshen-Drummond and UP&L plans would provide the greatest increase in reliability for the area transmission system. They would provide and additional source of power farther into an area currently served by a single line than would the other two BPA construction alternatives, thus, reinforcing the area transmission system closer to one of the growth areas and increasing the system's reliability. Goshen-Drummond would have greater loss savings than would the other two BPA plans. Loss savings for Goshen-Drummond and for the UP&L plan would be similar.

Because the project is being proposed primarily to impove reliability to BPA's Fall River and Lower Valley customers, having only one entity operate and maintain all sources of power to the customers is an advantage in terms of coordination and reliability of service. The UP&L alternative would not provide this advantage. This advantage would hold if BPA should transfer owership of part of the line to UP&L, because BPA would continue to operate and maintain the line. Under the Goshen-Drummond plan, UP&L would be able to tap the Goshen-Drummond line where needed in lieu of reinforcing their existing system.

Cost Considerations

The chosen alternative would have the lowest long-term cost of any construction proposal. Although No Action and Conservation would cost less, they do not meet the need. The other two BPA plans would have higher costs due to access, clearing, materials, and/or construction. Facility costs, charges for wheeling, and charges for the use of facilities required to reinforce UP&L's Rigby Substation and attributable to this project make the UP&L Build plan substantially more costly than the chosen plan.

Environmental Effects.

Only construction alternatives were considered here. The alternatives of No Action and Conservation would have little or no environmental impact, but do not meet the stated need for the project.

Although individual effects vary, levels of environmental disturbance would be similar for all four electrical plans of service. The UP&L plan crosses a more heavily settled and intensively farmed part of the Snake River Valley, and would therefore cause the most concerns for irrigated agriculture and developed land use. Recreation, wildlife, and esthetic concerns are most significant for the Goshen-Swan Valley-Targhee and Goshen-Targhee plans. The selected plan (Goshen-Drummond) falls midway between these other plans. It would have more impacts for natural resources and dryland farming than the UP&L plan, but less than the other two BPA plans. It would have fewer effects on irrigation and developed land use than the UP&L plan, but more than the other BPA plans. The selected plan offers substantial opportunities for mitigate or avoid impacts by routing along roads, using single-pole construction, or rebuilding existing facilities in places. The UP&L plan offers similar opportunities, but the other two BPA plans do not.

Transfer of ownership of part of the line to UP&L would change the economic effects of the project. Because economic impacts are minor for the overall project and are not a major factor in the environmental comparison, such changes are not important to the selection of the Goshen-Drummond plan. Under Federal ownership, the

facilities would not be subject to State or local taxes. Any portion of the line under private ownership would be taxable. A small net positive local economic benefit would result from selling part of the line.

Because resource tradeoffs for the four construction plans would balance out, environmental impacts were not a factor in selecting a construction plan. They were, however, critical in determining the route of least impact, the designs, and mitigation for the chosen plan. The selected route and design options are the environmetally preferred ones.

Public Concerns

Public input on alternative plans and on route and design options was considered in making plan, route, and design selections.

A few commenters expressed concern over whether one of the other three construction plans might better meet the need, cost less, or have lower impact. However, most commenters did not question that Goshen-Drummond would best satisfy these conditions. The comparisons above show that the alternative plans do not meet these criteria better than the plan chosen.

Public concerns over resource tradeoffs were a major factor in developing locations, designs, and mitigation for the Goshen-Drummond Plan. The decisions to build double-circuit out of Goshen Substation and to reroute the line in the town of Ririe and elsewhere were direct responses to public requests and were environmentally preferable. The decisions to locate along existing linear features as much as possible and to use single-pole construction in developed or irrigated areas were responses to public concerns to avoid impacts on agricultural land and residences. The crossing of the Snake River an the location north to Moody Creek were developed to meet agency and environmental group concerns to avoid wildlife, scenic, and recreational effects without compromising important land uses such as irrigated agriculture and residences.

Overall, the Goshen-Drummond Plan was selected because it would best satisfy engineering performance and cost criteria, while being at least as acceptable as the other construction alternatives in meeting environmental and public concerns. Specifically:

- It would provide the greatest increase in system reliability (equal to the UP&L plan);
- It would provide the greatest loss savings;
- It would retain the benefits for operation and maintenance of a single entity (BPA) managing the facilities serving the area customers;
- It would cost the least over the long term.

All of the wetlands and all but one of the floodplains crossed by the proposed route can be spanned at the South Fork Snake River crossing, however, four to five structures must be placed in the 100-year floodplain. The structures will be built on footings designed to withstand flooding and neither the construction activities nor the physical presence of the line will alter floodplain characteristics or create the potential for greater loss of property or life during flooding. Because the floodplain is too wide to be spanned, there is no practicable alternative to locating the structures in the flood plain. Also, all practicable measures to minimize potential harm to the floodplain have been included.

Mitigation

Means of mitigating environmental impacts of the project adopted as part of the proposal are listed under *Decision*. Additional measures not part of the proposal have also been adopted to reduce or avoid effects of the project which could still occur. Adopting these measures (listed below) insures that all practicable means have been used to protect the environment from harm; it also insures that BPA will follow its mandates for land management as set forth in law, regulation, and policy.

The following measures considered in the final EIS were adopted. They will be incorporated in the project construction specifications and the joint interagency mitigation plan. Where applicable, specific locations will be worked out by the interagency committee.

- Where the line parallels existing roads, access during construction will be from these roads. New access along the right-of-way (convenience roads) will be built only where absolutely necessary due to terrain limitations.
- Where there are some existing roads near key wildlife areas, spur roads to structure sites will be used to the extent practical, rather than continuous or loop roads. Road locations will be planned with assistance from the State of Idaho. Use of access roads will be controlled where appropriate.
- Noxious week surveys will be done by BPA before and after construction. A weed control plan will be developed, including mitigation measures to prevent spread of noxious weeds. The postconstruction survey will scheduled no sooner than one year after construction. BPA will work with each county on the project weed control effort.
- Disturbed areas will be seeded with quick-growing grass species easily adaptable to the site, and will be fertilized if necessary. Standard erosion control measures such as water bars, drainage structures, and low-gradient road cuts will also be used in problem soils areas. To reduce rutting and compaction, BPA will try to avoid construction on problem soils when they are wet.
- Sediment traps (e.g., bales of hay placed downstream to filter sediment during road construction) will be installed in streams with fishery values or in tributaries of these streams where road construction activities have a potential for affecting the fishery values.
- In riparian areas, clearing of vegetation for transmission line right-of-way will be limited. Access roads will be designed to avoid riparian areas as much as possible. Where canyons (such as Moody Creek and the Teton River) can be spanned with adequate line clearance, they will not be cleared. Limited clearing may be required near the top of the canyon sides to obtain adequate clearance from the conductors.
- Osprey nesting platforms will be placed in a number of structures near the Snake River Crossing to serve as nesting sites. Number and locations of platforms will be worked out by the interagency mitigation committee.
- No transmission towers or access roads will be constructed in wetland areas.
- Vegetation management plans, including uses of herbicide applications, will be developed for public lands in cooperation with the appropriate Federal land management agency (BOR, BLM).
- A vegetation control program will be used selectively to minimize injury to groundcover and low-growing shrubs which are compatible with the line and which stabilize the soil.
- To reduce effects on air quality, debris piles will be kept as clean and dry as possible and burned in such a manner as to reduce smoke. No garbage or petroleum-based products will be burned. Water or other dust control agents will be used on roads as necessary.
- Coordination with local government agencies will minimize service- and community-related impacts from the construction workforce. Close consultation with landowners on structure and access road siting, advance notice of necessary construction and maintenance work,

continued development of fair negotiation and compensation practices for easement acquisition, and prompt response to landowner problems are measures that will reduce socioeconomic impacts. Good gate management and location of structures off irrigated land wherever possible will also limit social concerns related to trespass and interference with agricultural operations.

• If residents experience television or radio reception problems due to the line, BPA will investigate such reports and provide appropriate mitigation to restore reception to preconstruction level if a BPA facility should be found to be the cause.

• Potential problems with telecommunication or railroad entities due to BPA's line will be investigated and mitigated in the design stage (before construction), according to BPA policy and in cooperation with the affected entity.

• BPA will undertake additional consultation with the Fort Hall Shoshone-Bannock Tribe should sites of religious significance be discovered during the preconstruction archeological survey. BPA would consider excavation to recover below-ground cultural remains; this could partially avoid loss of cultural deposits at most identified historic and prehistoric sites. Impacts on any remaining structures would be avoided should they be determined eligible for nomination to the "National Register of Historic Places."

Monitoring and Enforcement

BPA construction inspectors will monitor all phases of construction to ensure that all BPA standards are met. Incorporating all project mitigation measures in the project construction specifications will ensure that their implementation is monitored and enforced.

The postconstruction weed survey will serve to monitor the effectiveness of measures specified in the weed control plan.

In addition, BPA will participate with other affected agencies in an interagency mitigation committee. BPA will adopt additional mitigation measures identified and agreed upon by this committee. Specific monitoring and enforcement procedures and schedules, if necessary, will be determined by the committee, beginning in the spring of 1986.

FOR FURTHER INFORMATION CONTACT:

Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208, telephone (503) 230–5136.

Issued in Portland, Oregon, on February 20, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86–4712 Filed 3–4–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Case No. WH–004]

Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedure From Bock Water Heaters, Inc.

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Bock Water Heaters, Inc., (Bock) of Madison, Wisconsin, requesting a waiver from the Department of Energy (DOE) test procedure for water heaters. Bock manufactures a Model 32PG gas-fired water heaters which has a high mass heat exchanger. The petition requests DOE to grant Bock relief from the DOE test procedure for water heaters for its Model 32PG gas-fired water heater on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of this unit. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data and information not later than [April 4, 1986.]

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. WH–004, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9513.

Background

The Energy Conservation Progam for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), which was subsequently amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619, 92 Stat. 3266). This program requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure, and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Water heaters are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of water heaters, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of water heaters to disclose on an EnergyGuide label on each unit to asist consumers in making a purchasing decision.

By letter dated January 13, 1986, Bock filed a petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its Model 32PG gas-fired water heater. Bock states that the mass of the combustion chamber and heat exchanger of this water heater model is the highest of any water heater known to Bock. Bock further states that the Model 32PG gas-fired water heater is identical in "statistics and performance" with the Model 32E oil-fired water heater. DOE granted Bock a test procedure waiver for its Model 32E oil-fired water heater by notice published in the Federal Register on November 15, 1985. 50 FR 47106. (Hereafter referred to as the November waiver.)

Bock claims that the efficiency of the Model 32PG gas-fired water heater is approximately 78 to 80 percent, or approximately 11 to 13 percentage points higher than the current DOE test procedure yields. While Bock does not propose an alternative test procedure, DOE assumes that Bock proposes that DOE consider the same test method for its Model 32PG gas-fired water heater as that specified in the waiver granted to Bock for its Model 32E oil-fired water heater. The November waiver specified a "simulated use" test method. The simulated use test method involves withdrawing water from the hot water outlet of the water heater in three separate consecutive water draws. The recovery efficiency is then calculated based upon the total energy consumed over the three consecutive water draws.

In addition to comments for or against DOE granting Bock's request for a waiver, DOE invites comments on the efficacy of the simulated use test method or any other test methods which a commenter may wish to advance.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing thre "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.., February 27, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-4810 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI86-211-000]

Lynx Exploration Co.; Application for Abandonment Authorization

February 27, 1986.

Take notice that on February 20, 1986, Lynx Exploration Company (Applicant), 1580 Lincoln Street, Suite 800, Denver, Colorado 80203 filed an application for an expedited abandonment of a sale of gas previously made by Amoco Production Company (Amoco) to Panhandle Eastern Pipe Line Company (Panhandle) certificated in Docket No. CI72-440 pursuant to a July 5, 1979, contract, on file as Amoco's FERC Gas Rate Schedule No. 587. Applicant proposes to abandon service from its interest in the SE¼ Section 5-T2S-R63W, 6 p.m., Chieftain Field, Adams County, Colorado.

Applicant states that gas from the J-Sand is presently dedicated to interstate commerce under the subject contract. By Farmout Assignment executed June 10, 1985, effective May 1, 1985, Applicant earned the subject interest from Amoco by drilling and completing as a producing well, the #1 Amoco-Wailes well, located in the NE¼ Section 5-T2S-R63W, 6 P.M. Applicant further states that the well is presently producing from the D-Sand only and Applicant desires to recomplete in the J-Sand. However, Applicant states that Panhandle, due to its oversupply situation, is not desirous of purchasing the J-Sand gas. Therefore, in order for Applicant to be able to market the gas from the J-Sand, Applicant states it is necessary for Applicant to obtain abandonment authorization so that Panhandle can then release Amoco from the July 5, 1979, contract, Amoco can then release its call on the gas and Applicant can then obtain another market for the gas. By letter dated February 11, 1986, Panhandle concurred with and supports Applicant's request for abandonment authorization. Panhandle advised Applicant that the subject gas, being situated on old leases, is dedicated to interstate commerce until the well receives a final NGPA section 103 determination which may take approximately twelve months, or until abandonment authorization is obtained. Panhandle further advised Applicant that upon being granted abandonment authorization, Panhandle will tender a Release Agreement. Applicant proposes to market the gas to Vessel Gas Processing Company for resale to Colorado Interstate Gas Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4787 Filed 3-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-155 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Carbonaire Co., Inc.); Order Granting Rehearing for Further Consideration

Issued February 28, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Carbonaire Co., Inc. has filed a timely request for rehearing in the above-captioned docket. Rehearing of the Order Denying Request for Clarification issued on January 7, 1986 is granted solely for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or to the request for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4785 Filed 3-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-154 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Midwestern Gas Transmission Co.); Order Granting Rehearing for Further Consideration

Issued February 28, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 5, 1986, the Panhandle Producers and Royalty Owners Association and the Independent Petroleum Association of Mountain States filed a request for rehearing of the Commission's decision issued January 7, 1986, concerning Midwestern Gas Transmission Company.[1] In order to provide sufficient time to consider the issues raised in these pleadings, the Commission grants rehearing for the limited purpose of further consideration. As provided in § 385.713 of the Commission's Rules of Practice and

[1] Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol (Midwestern Gas Transmission Company), 34 FERC ¶ 61,007 (1986).

Procedure, no answers to the requests for rehearing will be considered.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4786 Filed 3-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-337-000, et al.]

Natural Gas Certificate Filings; Algonquin Gas Transmission Company, et al.

February 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP86-337-000]

Take notice that on February 20, 1986, Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Road, Boston Massachusetts 02135, filed in Docket No. CP86-337-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin Gas to render a limited-term interruptible transportation service on behalf of The Southern Connecticut Gas Company (Southern Connecticut), to construct facilities to expand the use of its Wallingford, Connecticut, interconnection, and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin Gas states that Southern Connecticut has requested Algonquin Gas to provide an interruptible transportation service which would enable Southern Connecticut in turn to deliver supplies of gas to The United Illuminating Company (UI) for use in UI's electric generating plant in New Haven, Connecticut. Algonquin Gas requests authority to implement this service for Southern Connecticut under proposed Rate Schedule PP-T for a limited term commencing upon Commission authorization acceptable to Algonquin Gas and ending December 31, 1990. Algonquin Gas requests that the limited-term authorization for service requested herein be issued in such a form as to indicate explicitly that Algonquin Gas has not, by this application or by the transportation service proposed herein, become a "transporter" pursuant to the Commission's final rules in Docket No. RM8-1-000.

More specifically, UI proposes to purchase gas from Tenngasco Corporation, a Tenneco company (Tenngasco). Algonquin Gas states that Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), would transport the gas purchsed by UI to existing points of interconnection between Tennessee and Algonquin Gas. It is stated that Tenngasco, acting as agent for UI, has entered into an agreement with Tennessee to provide transportation on behalf of Tenngasco and that on November 1, 1985, Tennessee filed an application in Docket No. CP86-179-000 requesting authority to render a transportation service for Tenngasco. Algonquin Gas indicates that deliveries of such gas would be made at the Wallingford, Connecticut, interconnection or, alternatively, at the existing Mahwah, New Jersey, or Mendon, Massachusetts, interconnections as agreed by Algonquin Gas. Algonquin Gas indicates that it would receive such gas at the Wallingford, Connecticut, or other point of interconnection with Tennessee, would transport such gas to Southern Connecticut's existing delivery point located at North Haven, Connecticut, and would deliver equivalent quantities (reduced for fuel if applicable) to Southern Connecticut.

To render the service, Algonquin Gas proposes to install minor auxiliary facilities at the Wallingford, Connecticut, interconnection. It is stated that this would not affect the capacity of Algonquin Gas' pipeline system. It is indicated that such minor auxiliary facilities, estimated to cost $200,000, would include but not be limited to data acquisition equipment. Algonquin Gas states that such facilities, which would allow for routine service rather than emergency exchange service, would be installed at Southern Connecticut's expense.

It is stated that the proposed limited-term transportation service to be rendered for Southern Connecticut would contemplate the delivery of a maximum daily quantity of up to 44 billion Btu of gas per day on an interruptible basis. However, Algonquin Gas proposes to render service in accordance with section 6 of proposed Rate Schedule PP-T, which provides that the "* * * Maximum Daily Quantity shall not foreclose Shipper and Transporter from scheduling on any day a transportation quantity which may be larger than the Maximum Daily Quantity." It is stated that such language is standard for interruptible services and would provide the parties with operating flexibility in the daily dispatching of gas.

It is stated that the rate to be charged for service would be 14.74 cents per million Btu of gas delivered, which is Algonquin Gas' long-established rate for interruptible transportation. It is further stated that such rate would be incorporated in a new rate schedule, Rate Schedule PP-T, which would also provide, *inter alia*, for the reimbursement of fuel and GRI charges, as applicable.

Algonquin Gas requests expedited treatment of this application in order to provide the proposed services in a timely manner. It is stated that such expedited treatment would enable UI to maximize cost savings to its customers by commencing its supply purchase as soon as its generation plant can consume natural gas which is estimated to be May 15, 1986. In addition, given the limited-term nature of this proposed service, Algonquin Gas requests corresponding pre-granted authority to abandon such service as of December 31, 1990.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-339-000]

Take notice that on February 20, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-339-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file and open to public inspection.

Northern proposes to transport on a firm basis up to a maximum daily quantity (MDQ) of 12,500 Mcf of natural gas for Texas Gas under the terms of a January 22, 1986, gas transportation agreement. Northern also proposes to transport volumes in excess of the MDQ on a best-efforts basis. The proposed term of the transportation service, it is indicated, is 15 years from the date of initial delivery an bi-yearly thereafter.

It is stated that the gas is produced from Eugene Island Block 372, offshore Louisiana (EI 372). It is explained that Texas Gas has contracted to purchase 35 percent of the reserves attributable to EI 372 from Union Exploration Partners, Ltd. (UXP). Northern would receive the gas, including overrun volumes, at the interconnection of UXP-owned facilities and a 16-inch pipeline jointly owned by Northern, Columbia Gulf Transmission Company, and Texas Eastern Transmission Corporation (Texas

Eastern) in EI 342. It is further stated that Northern would transport and redeliver thermally equivalent volumes to Texas Gas at the interconnection of the 16-inch pipeline and a 30-inch offshore lateral jointly owned by Texas Gas, Texas Eastern, and Tennessee Gas Transmission Corporation in EI 342.

Northern proposes to charge Texas Gas a monthy demand charge of $33,098 for transportation of the MDQ and a rate of 8.71 cents per Mcf for volumes transported in excess of the MDQ.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP86–315–000]

Take notice that on February 11, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86–315–000 a petition for a declaratory order granting an exemption from the requirements of section 7(c) of the Natural Gas Act or in the alternative a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the limited-term delivery of gas for direct sale service to Exxon Company USA (Exxon) for use as start-up gas in Exxon's Shute Creek processing plant in Lincoln County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. By supplemental letter dated February 21, 1986, Northwest withdrew its request for declaratory order.

It is stated that on December 4, 1985, Exxon and Northwest entered into a start-up gas sales agreement whereby Northwest would provide up to 25,000 Mcf of natural gas per day of pipeline quality gas for use as fuel gas for start-up operations at Exxon's soon to be completed Shute Creek plant. It is explained that the start-up gas would be used to purge the various processing facilities within the plant site, which would include boilers, sulfur furnaces, thermal oxidizers, sulfur and carbon dioxide rejection facilities and dehydration and flare assistance facilities. Exxon estimates that the total usage of start-up gas would be approximately 750,000 Mcf.

Northwest states that it would charge Exxon in accordance to its Rate Schedule DS–1 flat commodity rate which is currently 34.134 cents per therm as set forth in Northwest's FERC Gas Tariff, First Revised Volume No. 1, for all volumes sold to Exxon under the December 4, 1985, agreement.

It is also explained that Northwest was authorized August 30, 1985, in Docket No. CP85–349–000 to construct and operate 17.53 miles of pipeline and appurtenant facilities extending from Northwest's existing Opal processing plant to the outlet of Exxon's partially completed Shute Creek processing plant, referred to as a residue line. Northwest was also authorized, it is stated, to use the residue line for the transportation of natural gas purchased by ANR Pipeline Company (ANR) from Exxon at the outlet of the Shute Creek processing plant. It is explained that ownership of the residue line would be split between Northwest and ANR upon commencement of Northwest's transportation service for ANR and that prior to that time, during the plant start-up period, Northwest would retain 100 percent ownership in the residue line. It is further explained that the December 4, 1985, sales agreement provides that Exxon would pay Northwest's full cost of service for the residue line, based upon 100 percent ownership of the residue line, commencing January 1, 1986, and ending at such time as Exxon first delivers processed gas to Northwest for transportation for the account of ANR through the residue line. It is stated that the monthly residue line cost-of-service charge to Exxon for the period commencing January 1, 1986, is estimated to be $114,566.

It is stated that the term of the sales agreement is from the date of initial deliveries to Exxon and would continue for a period of six months or until the date of initial delivery of processed gas to Northwest for transportation for the account of ANR through the residue line, whichever date is earlier. It is indicated that the agreement may be terminated by either party upon five days written notice.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP86–301–000]

Take notice on January 31, 1986, that Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP86–301–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for National Distillers and Chemical Corporation (NDCC) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport up to 11,000 Mcf per day (21,120 million Btu per day) of a gasified 80–20 percent ethane-propane mix for NDCC on an interruptible basis during the months of April through November, which gas would be received from Mid-America Pipeline Company at an existing point of interconnection with Panhandle in Pratt County, Kansas, and delivered to NDCC through an existing point of delivery in Douglas County, Illinois.

The volumes to be transported for NDCC are supplemental to volumes of extractable hydrocarbons available to NDCC under its agreement with Panhandle for the purchase of ethane and heavier hydrocarbons out of Panhandle's gas stream. It is explained that these supplemental volumes are needed during periods when Panhandle's gas stream is diminished or the quantity of extractable ethane and heavier hydrocarbons is diminished. NDCC claims it would experience extraordinary and severe operational problems at its Tuscola, Illinois, plant from diminished quantities of extractable hydrocarbons being available.

Panhandle proposes to charge 84.0 cents per million Btu to perform such service and would retain 5.03 percent (about 1062 million Btu) for fuel and unaccounted-for line loss volumes. Panhandle would also collect the Gas Research Institute funding unit applicable to this service. No new facilities would be constructed to perform such service.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86–322–000]

Take notice that on February 12, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP86–322–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially service to Allied Paper Corporation (Allied), Boise Southern Company (Boise), Georgia-Pacific Corporation (Georgia-Pacific), Manville Forest Products Corporation (Manville), Masonite Corporation (Masonite), Mississippi Power Company-Sweatt (MPCO-Sweatt), Mississippi Power Company-Watson (MPCO-Watson), Stone Container Corporation (Stone), and Vertac Chemical Corporation (Vertac), pursuant to the agreements between each of the parties and United, all as more fully set forth in the

application which is on file with the Commission and open to public inspection.

United and the aforesaid industrial customers have agreed to modify their maximum daily quantity (MDQ) of natural gas. Accordingly, United States, that it and the parties, respectively, entered into separate agreements providing for a reduction in each customer's MDQ as shown below:

Certificated docket No.	Industrial sales customer (existing MDQ Mcf per day)	New MDQ	Date of new agreement
CP64-301	Allied (14,000)	6,000	10/29/84
CP71-89	Boise (28,000)	20,000	12/20/84
CP66-280	Georgia-Pacific (32,000)	27,000	11/27/84
G-232	Manville (35,000)	19,000	7/15/84
G-232	Masonite (40,000)	17,000	12/21/84
G-1447	MPCO-Sweatt (23,000)	15,000	10/29/84
G-11, 200	MPCO-Watson (74,000)	35,000	10/29/84
G-232	Stone (22,000)	18,000	5/24/85
G-1447 and CP61-13	Vertac (8,700)	7,000	10/29/84

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without futher notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it wil be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-4784 Filed 3-4-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Notice is hereby given of the following meeting:

Name: Solid Earth Sciences Panel of the Energy Research Advisory Board.

Date and time:

March 18, 1986–9:00 a.m.–5:00 p.m.

March 19, 1986–9:00 a.m.–12:00 Noon.

Place: March 18: Department of Energy, 1000 Independence Avenue, SW., Room 8E-089, Washington, DC 20585.

March 19: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-5767.

Purpose of the Parent Board

To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel

The purpose of the Panel is to review the research and development programs of the Department of Energy involving the solid earth sciences, including such topics as basic research in continental structure, modeling enhanced oil recovery and underground migration of chemicals. The Panel will also review the arrangements for coordination between industry, universities, and Federal agencies.

Tentative Agenda

March 18, 1986

- Current earth sciences programs in DOE and National Laboratories
- Missions of other Federal agencies involved in solid earth sciences
- Industry, academic, and Government needs for earth scientists in the short and long range
- Public Comment—10 minute rule

March 19, 1986

- Scope of Panel's study
- Future meeting plans
- Public Comment—10 minute rule

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes of the Meeting

The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 21, 1986.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 86-4716 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final Environmental Impact Statement Availability; Mead-Phoenix ±500-kV Transmission Line Project, Arizona and Nevada

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of availability for final environmental impact statement.

SUMMARY: Notice is hereby given that the U.S. Department of Energy (DOE), Western Area Power Administration (Western), has issued a final environmental impact statement (EIS) for the Mead-Phoenix ±500-kV Transmission Line Project in Arizona and southern Nevada, DOE-EIS-0107-F. The final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council of Environmental Quality regulations, 40 CFR Parts 1500-1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, and as amended.

DATES: Written comments must be sent and postmarked no later than March 31,

1986, to be considered in the decisionmaking process.

For further information or copies of the final EIS, contact:

Mr. Charles Saylor, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293–8844

Mr. Gary Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1527

Ms. Lida Whitaker, Office of Environmental Guidance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6374

Background Information

Western, in cooperation with the Bureau of Land Management (BLM) and National Park Service (NPS), has developed an EIS to assess the environmental effects of constructing, operating, and maintaining a 240-mile 500-kilovolt (kV) direct-current transmission line from the proposed Eastwing Terminal near Phoenix, Arizona, to the Mead Substation near Boulder City, Nevada. Alternating-current/direct-current converter terminals would be constructed at the proposed Eastwing Site and the Mead Substation with about 20 miles of distribution line between a ground electrode and each terminal. Communication facilities would also be constructed.

The line is proposed by Western, the Southern California Public Power Authority (SCPPA), M-S-R (Modesto-Santa Clara-Redding) Public Power Agency, and the Salt River Project (SRP) of Phoenix, Arizona. The proposed project would: (1) Help reduce dependence on oil and natural gas for electricity consumed in the SCPPA and M-S-R member service areas; (2) furnish access for all project sponsors to the economy energy market; (3) provide a path for sale of SRP's offpeak surplus capacity to California markets; (4) provide a path for Western to deliver Arizona's increased entitlement of power and energy from Hoover Generating Station; (5) help provide a link for movement of power and energy between the Pacific Northwest and the Pacific Southwest; (6) enhance system reliability; (7) help meet the forecast need for power of SCPPA and M-S-R members by providing firm, long-term transmission capacity; and (8) provide out-of-basin support during Los Angeles' air quality Stage III episodes. The Mead-Phoenix Project will initially be designed to transfer 1,600 megawatts (MW) between the Phoenix area and southern Nevada, with ultimate capacity of up to 2,200 MW.

Alternatives considered include no action, energy conservation, alternative generation sources, alternative transmission technologies, and the proposed action with various routing alternatives. The preferred routing alternative would be located in the counties of Clark, Nevada, and Mohave, Yavapai, and Maricopa, Arizona. Potential significant impacts on cultural, biological, and visual resources have been identified.

The Environmental Protection Agency's Notice of Availability for the draft EIS on the Mead-Phoenix ±500-kV Transmission Line Project was published in the **Federal Register** on March 2, 1984. Public hearings were held in Peoria and Kingman, Arizona, and Boulder City, Nevada, on March 27, 28, and 29, 1984, respectively. The final EIS responds to public comments received on the draft EIS and describes a minor change in the preferred route as a result of these comments. The final EIS should be used in conjunction with the draft EIS.

Copies of the final EIS have been distributed to the recipients of the draft EIS. The final EIS and a copy of the draft EIS have been distributed to and are available for public inspection at: (1) Phoenix Public Library, Arizona State University Library, Clark County Library, and University of Nevada at Las Vegas Library; (2) Clark, Mohave, Yavapai, and Maricopa County planning offices; (3) BLM District Offices in Las Vegas, Nevada (4765 Vegas Drive), and Phoenix, Arizona (2015 West Deer Valley Road), and BLM Resource Area Offices in Kingman, (2475 Beverly Avenue) and Lake Havasu City (3189 Sweetwater Avenue), Arizona; (4) NPS office in Boulder City, Nevada (601 Nevada Highway); (5) Western offices in Boulder City (3 miles south on Buchanan), Phoenix (615 South 43rd Avenue), and Golden, Colorado (1627 Cole Blvd.); and (6) The DOE reading room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies of the draft and/or final EIS will be distributed by Western upon request.

Written comments should be sent to: Mr. Gary Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401

Issued at Washington, DC February 24, 1986.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 86–4714 Filed 2–28–86; 11:29 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50652; FRL–2976–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–48. Issuance. Abbott Laboratories, 14th and Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 35.23 pounds of the plant growth regulator gibberellins A_4A_7 on apples to evaluate its use as a growth regulator for the suppression of russetting on apples. A total of 644 acres are involved; the program is authorized only in the States of California, Maine, Massachusetts, Michigan, North Carolina, New York, Oregon, Pennsylvania, and Washington. The experimental use permit is effective from February 15, 1986 to February 15, 1987. A permanent tolerance for residues of the active ingredient in or on applies has been established (40 CFR 180.224). (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

8340–EUP–9. Extension. American Hoechst Corporation, Agricultural Division, Route 202–206 North,

Somerville, NJ 08876. This experimental use permit allows the use of 1,470 pounds of the herbicide (±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy propanoate on turfgrasses to evaluate selective control of grassy weeds. A total of 4,200 acres are involved; the program is authorized in the States of California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, Washington, and Wisconsin. The experimental use permit is effective from March 1, 1986 to March 1, 1987. This permit is issued with the limitation that pastures and rangelands are not treated. (Richard Mountfort, PM 23, Rm. 237, CM # 2, (703–557–1830))

10182–EUP–39. Issuance. ICI Americas, Inc., Agricultural Chemicals Division, New Murphy Road and Concord Pike, Wilmington, DE 19897. This experimental use permit allows the use of 2,250 pounds of the plant growth regulator (±)-(R*,R*)-beta-[(4-chlorophenyl)methyl]-alpha-(1,1-dimethyl-ethyl)-1H-1,2,4-triazole-1-ethanol on ornamental and shade trees to evaluate the effectiveness of retardation of shoot growth. A total of 112 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from January 17, 1986 to January 17, 1988. This permit is issued with the limitation that sugar maple trees or any other trees that could be tapped for sugar not be treated. Also, treated fruit or nut trees are not to be harvested within 1 year after application. (Robert Taylor, PM 25, Rm. 245, CM # 2, (703–557–1800))

748–EUP–23. Issuance. PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272. This experimental use permit allows the use of 93 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate on conifer seedbeds to evaluate the control of various weeds. A total of 62 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 1, 1986 to April 1, 1987. (Richard Mountfort, PM 23, Rm. 237, CM # 2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 19, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–4485 Filed 3–4–86; 8:45 am]

BILLING CODE 6560–50–M

[PF–435 FRL–2976–9]

Pesticide Tolerance Petitions; Ciba-Geigy Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–435] and the petition number, attention Product Manager (PM–21): at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM–21), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 229, CM No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, proposing to amend 40 CFR 180.408 by establishing tolerances for the combined residues of metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the commodities as follows:

Petition identity	Commodities	Parts per million
PP 6F3330	Asparagus	7.0
PP 6F3337	Strawberries	5.0

The proposed analytical method for determining residues is gas chromatography using a nitrogen/phosphorus detector operating in the nitrogen-specific mode. PM–21

Authority: 21 U.S.C. 346a.

Dated: February 18, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–4484 Filed 3–4–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–32500; FRL–2977–2]

Pesticide Programs; Conditional Registration of New Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA policy regarding approval or denial of applications for conditional registration of pesticide products containing new active ingredients under section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act. The notice sets out policies on the criteria for

approval, publication of notice of such approval in the **Federal Register**, the conditions of registration (and the consequences of failure to meet the conditions), and conversion from conditional to unconditional registration.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Washington, DC 20460

Office location and phone number: Room 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–0944).

SUPPLEMENTARY INFORMATION:

I. Conditional Registration

FIFRA section 3(c)(7)(C) authorizes the Administrator of EPA to issue a conditional registration for a pesticide product containing an active ingredient not contained in any previously registered product (a new chemical) in the absence of certain required data, if the Administrator determines that:

1. Since the data requirement was imposed, there has been insufficient time for the data to have been generated;

2. During the period of the conditional registration, use of the pesticide will not cause unreasonable adverse effects; and

3. Use of the pesticide is in the public interest.

All three determinations must be made before issuance of the conditional registration. If approved, the registration is contingent upon the registrant's submitting the required data within a certain time, and, when received, upon the data showing that the pesticide does not meet or exceed special review criteria. If either of these two conditions are not met, the conditional registration may be cancelled under FIFRA section 6(e) [but see also Unit X].

II. Data Requirements

First, the Agency must determine that there has been insufficient time since a data requirement was imposed for the applicant to have generated the required data. To make this determination, the Agency must specify both a date when data requirements were imposed and an acceptable timeframe for conducting each study.

A. When Are Data Requirements Imposed?

The Agency considers that most data requirements were imposed, and prospective applicants given notice of such data requirements, on the date of publication in the **Federal Register** of proposed 40 CFR Part 158, Data Requirements for Pesticide Registration (November 24, 1982; 47 FR 53192). On that date the Agency formally proposed a specific set of data requirements that applicants for registration could use as the basis for submitting an application for registration. The Agency had originally proposed most of the data requirements of Part 158 in 1978, and, as a practical matter, had applied them on a case-by-case basis since that time. The Agency believes that applicants for registration of new chemical were also informally using the 1979 proposed requirements as the basis for their applications and were familiar with them. Thus EPA believes that using the 1982 formal proposal date as the date of imposition of data requirements is reasonable.

If a data requirement was not included in proposed Part 158 on that date, but was contained in the final rule, the Agency considers the date requirement to have been imposed as of the April 25, 1985, effective date of Part 158.

If a data requirement was included in the proposal, but modified in the final rule, the Agency will presume that the earlier date applies. An applicant who believes that the requirement was significantly modified between proposal and promulgation such that the latter date should apply must justify his request in terms of the effect such modification had on his testing or data development planning. EPA believes that few such situations have occurred, because the final Part 158 rule did not result in major changes from the proposal.

All data requirements in part 158 are considered to have been imposed as of the dates given above, including "tiered" requirements (the requirement for the study is dependent on the results of an earlier study).

B. Completeness of Applications

The Agency expects that an applicant for conditional registration of a new chemical will submit a complete set of required studies. An applicant is expected to apply the criteria of Part 158 himself (in conjunction with additional information in the Pesticide Assessment Guidelines), and, if he is unable to ascertain that a particular study is required from Part 158, to consult with the Agency. Studies for which the Agency believes consultation is a necessary step are indicated in the tables in Unit II.C with the symbol "†". However, applicants should extend their enquiries to other studies if they believe it necessary. An applicant should consult with the Agency at the earliest possible time after completion of a lower tier study if his results suggest the need for additional testing. Moverover, a prospective applicant may request that the Agency screen his lower tier studies independent of the application process to determine them need for additional studies.

The Agency intends to issue additional guidance on its data requirements in Part 158 to reduce the need for Agency consultation. A notice is in preparation for publication in the **Federal Register** setting out definitive criteria for initiating higher tier aquatic and non-target insect testing. The criteria stated in that notice are clear and unambiguous, and allow an applicant to determine with certainty whether higher tier testing is required. The Agency intends in the future to incorporate these criteria into its regulations.

The Agency is also prepared to offer considerable assistance in advance of application to minimize the possibility that the application will be incomplete. Incomplete applications will be returned and applicants may suffer delays in the review of resubmitted applications. Hence it is prudent to seek Agency assistance whenever any uncertainty arises with respect to data requirements.

The Agency will rarely grant conditional registration solely because an applicant claims to have been unable to ascertain in advance of application that a study was required.

The Agency will consider the applicant's good faith effort to determine and comply with data requirements, EPA's need for the data that have not been generated, and whether there are concerns that the missing data might address. If a data requirement is clearly not foreseeable by the applicant before applicant (e.g., it is not contained in Part 158, or the Agency is unable to provide early guidance based on a screening level review), the Agency will be more likely to grant conditional registration for the purpose of generating the data.

C. What Is a Period Reasonably Sufficient for Generation of Data?

On August 22, 1985, the Agency issued PR Notice 85–5, Policy Regarding Time Extensions for Submitting Additional Data to Support Existing Registrations, which lists the timeframes EPA believes are reasonably sufficient to generate required studies. The timeframes in PR Notice 85–5 are reprinted in the following tables:

PRODUCT CHEMISTRY DATA REQUIREMENTS (§ 158.120)

	Guideline reference	Time generally allowed for conducting study (months) [1]
Product Identity:		
Product identity and disclosure of ingredients	61—1	6
Description of begining materials and manufacturing process	61—2	6
Discussion of formation of impurities	61—3	6
Analysis and certification of ingredients:		
Preliminary analysis	62—1	12
Certification of limits	62—2	12
Analytical method for enforcement of limits	62—3	12
Physical and Chemical Properties:		
Color	63—2	6
Physical state	63—3	6
Odor	63—4	6
Melting point	63—5	6
Boiling point	63—6	6
Density, bulk density, or specific gravity	63—7	6
Solubility	63—8	6
Vapor pressure	63—9	6
Dissociation constant	63—10	6
Octanol/water partition coefficient	63—11	6
pH	63—12	6
Stability	63—13	6
Oxidizing or reducting action	63—14	6
Flammability	63—15	6
Explodability	63—16	6
Storage stability	63—17	15
Viscosity	63—18	6
Miscibility	63—19	6
Corrosion characteristics	63—20	15
Dielectric breakdown voltage	63—21	6
Other Requirements:		
Submittal of samples	64—1	6

[1] This is the time that a registrant is generally allowed to respond to a request for data. It includes: lead time, test period, analysis and reporting. Allowances to these dates will be made for seasonal adjustments.

RESIDUE CHEMISTRY DATA REQUIREMENTS (§ 158.125)

	Guideline reference	Time generally allowed for conducting study (months)
Chemical Identity	171–2	6
Directions for Use	171–3	6
Nature of Residue:		
Plants	171–4	[1]18
Livestock	171–4	18
Residue Analytical Method	171–4	15
Magnitude of the Residue:		
Crop Field Trials	171–4	[1]18
Processed Food/Feed	171–4	[1]24
Meat/Milk/Poultry/Eggs	171–4	18
Potable Water	171–4	15
Fish	171–4	15
Irrigated Crops	171–4	[1]18
Food Handling	171–4	12
Reduction of Residue	171–5	9
Reasonable Grounds in Support of Petition	171–7	6

[1] Depending on seasonal needs, time may be extended.

ENVIRONMENTAL FATE DATA REQUIREMENTS (§ 158.130)

	Guideline reference	Time generally allowed for conducting study (months)
Degradation Studies (Lab):		
Hydrolysis	161–1	9
Photodegradation:		
In water	161–2	9
On soil	161–3	9
In air	161–4	9
Metabolism Studies (Lab):		
Aerobic soil	162–1	27
Anaerobic soil	162–2	27
Anaerobic aquatic	162–3	27
Aaerobic aquatic	162–4	27
Mobility Studies:		
Leaching (adsorption/desorption)	163–1	12
Volatility: [1]		
Lab	163–2	12
Field	163–3	15
Dissipation Studies (Field):		
Soil	164–1	27
Aquatic (sediment)	164–2	27
Forestry	164–3	27
Combination and tank mixes [1]	164–4	N/A
Soil (long term) [1]	164–5	50
Accumulation Studies:		
Rotational crops: [1]		
Confined	165–1	39
Field	165–2	50
Irrigated crops [1]	165–3	39
In fish	165–4	12
In aquatic non-target organisms [1]	165–5	12

[1] Consult with Agency to determine if study is required.

TOXICOLOGY DATA REQUIREMENTS (§ 158.135)

	Guideline reference	Time generally allowed for conducting study (months)
Acute Testing:		
Oral LD50—Rat	81–1	9
Dermal LD50—Rabbit (preferred species)	81–2	9
Inhalation LC50—Rat	81–3	9
Primary eye irritation—Rabbit	81–4	9
Primary dermal irritation—Rabbit	81–5	9
Dermal sensitization—Guinea Pig	81–6	9
Acute delayed neurotoxicity—Hen	81–7	12
Subchronic Testing:		
90-Day Feeding:		
Rodent	82–1	15
Non-Rodent (Dog)	82–1	18
21-Day dermal—Rabbit	82–2	12
90-Day dermal	82–3	15
90-Day inhalation	82–4	15
90-Day neurotoxicity—Hen, mammal	82–5	15
Chronic Testing:		
Chronic Feeding:		
2 spp. Rodent & Non-Rodent (Dog)	83–1	50
Oncogenicity Study:		
2 spp. Rat & Mouse (Preferred)	83–2	50
Teratogenicity (2 species)—Rat, mouse, hamster, rabbit	83–3	15
Reproduction (2-generation)—Rat or other species	83–4	39
Mutagenicity Testing:		
Gene Mutation (Ames Test)	84–2	9
Chromosomal Aberration	84–2	12
Other Mechanisms of Mutagenicity	84–4	12
Special Testing:		
General Metabolism—Rat	85–1	24
Dermal Penetration	85–2	12
Special Requirement:		
Domestic Animal Safety	86–1	[1]

[1] Variable depending on species and type of study required.

	Guideline reference	Time generally allowed for conducting study (months)
REENTRY PROTECTION DATA REQUIREMENTS (§ 158.140)		
Foliar Dissipation [1]	132–1	27
Soil Dissipation [1]	132–1	27
Dermal exposure [1]	133–3	27
Inhalation exposure [1]	133–4	27
WILDLIFE AND AQUATIC ORGANISM DATA REQUIREMENTS (§ 158.145)		
Avian and Mammalian Testing:		
Avian Oral LD50	71–1	9
Avian Dietary LC50	71–2	9
Wild mammal toxicity [1]	71–3	24
Avian reproduction	71–4	24
Simulated and actual field testing—mammals and birds [1]	71–5	[2]
Aquatic Organism Testing:		
Freshwater fish LC50	72–1	9
Acute LC50 freshwater invertebrates	72–2	9
Acute LC50 estuarine and marine organisms [1]	72–3	12
Fish early life stage and aquatic invertebrate lifecycle [1]	72–4	15
Fish—Lifecycle [1]	72–5	27
Aquatic organism accumulation [1]	72–6	12
Simulated or actual field testing—Aquatic organisms [1]	72 7	[2]

[1] Consult with Agency to determine whether study is required.
[2] Two to four years depending on number of examinations.

	Guideline reference	Time generally allowed for conducting study (months)
PLANT PROTECTION DATA REQUIREMENTS (§ 158.150)		
Target Area Phytotoxicity	121–1	9
Nontarget Area Phytctoxicity:		
Tier I:		
Seed Germination/Seeding Emergence	122–1	9
Vegetative Vigor	122–1	9
Aquatic Plant Growth	122–2	9
Tier II:		
Seed Germination/Seedling Emergence	123–1	9
Vegetative Vigor	123–2	9
Aquatic Plant Growth	123–3	9
Tier III:		
Terrestial Field	124–1	24–48
Aquatic Field	124–2	24–48
NONTARGET INSECT DATA REQUIREMENTS (§ 158.155)		
Nontarget Insect Testing—Pollinators:		
Honey bee acute contact LD50	141–1	9
Honey bee—Toxicity of residue on foliage	141–2	15
Honey Bee subacute feeding study [1]	141–4	[2]
Nontarget Insect Testing—Aquatic Insects:		
Acute Toxicity to aquatic insects [1]	142–1	15
Aquatic insect lifecycle study [1]	142–1	[2]
Simulated or actual field testing for aquatic insects	142–3	[2]
Nontarget Insect Testing—Predators and Parasites [1]	143–1 to 143–3	[2]

[1] Consult with Agency to determine whether study is required.
[2] Defer—No Guidelines or protocols have been developed for these studies.

Biochemical Pesticide Data Requirements (§ 158.165)

	Guideline reference	Time generally allowed for conducting study (months)
Pesticide Product Analysis:		
Product identity	151-10	6
Manufacturing process	151-11	6
Discussion of formation of unintentional ingredients	151-12	6
Analysis of samples	151-13	12
Certification of limits	151-15	12
Analytical methods	151-16	12
Physical and chemical properties	151-17	6
Submittal of samples	151-18	6
Pesticide Residue:		
Chemical identity	153-3	6
Directions for use	153-3	6
Nature of the residue:		
Plants	153-3	[1] 18
Livestock	153-3	18
Residue analytical method	153-3	12
Magnitude of the Residue:		
Crop field trails	153-3	[1] 18
Processed food/feed	153-3	[1] 24
Meat/milk/poultry/eggs	153-3	18
Potable water	153-3	15
Fish	153-3	15
Irrigated crops	153-3	[1] 18
Food handling	153-3	12
Reduction of residue	153-3	9
Reasonable Grounds in support of petition	153-3	6

[1] Depending on seasonal needs, time may be extended.

Biochemical Pesticide Data Requirements (§ 158.165)

	Guideline reference	Time generally allowed for conducting study (months)
Biochemical Pesticide Toxicology Data Requirements:		
Tier I:		
Acute oral toxicity	152-10	9
Acute dermal toxicity	152-11	9
Acute inhalation	152-12	9
Primary eye irritation	152-13	9
Primary dermal irritation	152-14	9
Hypersensitivity study	152-15	9
Hypersensitivity incidents	152-16	9
Studies to detect genotoxicity	152-17	9
Immune response	152-18	9
90-day feeding (1 spp.)	152-20	15
90-day dermal (1 spp.)	152-21	15
90-day inhalation (1 spp.)	152-22	15
Teratogenicity (1 spp.)	152-23	15
Tier II:		
Mammalian mutagenicity tests	152-19	9
Immune response	152-24	9
Tier III:		
Chronic exposure	152-26	50
Oncogenicity	152-29	50
Nontarget Organism, Fate, and Expression Data Requirements:		
Tier I:		
Avian acute oral LD50	154-6	9
Avian dietary LC50	154-7	9
Freshwater fish LC50	154-8	9
Freshwater invertebrate LC50	154-9	9
Nontarget plant studies	154-10	9
Nontarget insect testing	154-11	9
Tier II:		
Volatility	155-4	9
Dispenser-water leaching	155-5	9
Adorption-desorption [1]	155-6	9
Octanol/Water Partition [1]	155-7	9
UV absorption	155-8	9
Hydrolysis	155-9	9
Aerobic soil metabolism [1]	155-10	27
Aerobic aquatic metabolism [1]	155-11	27
Soil photolysis [1]	155-12	9
Aquatic photolysis [1]	155-13	9
Tier III:		
Terrestrial wildlife testing [1]	154-12	24-48
Aquatic animal testing [1]	154-13	24-48
Nontarget plant studies	154-14	24-48
Nontarget insect testing [1]	154-15	15

[1] Consult with Agency to determine if study is required.

Microbial Pesticides Requirements (§ 158.170)

	Guideline reference	Time generally allowed for conducting study (months)
Product Analysis:		
Product identity and Manufacturing process	151-20	6
Discussion of formation of unintentional ingredients	151-22	6
Analysis of samples	151-23	12
Certification of limits	151-25	12
Analytical methods	151-	12
Physical and chemical properties	151-26	6
Submittal of samples	151-27	6
Microbial Pesticide Toxicology Data Requirements:		
Tier I:		
Acute oral	152-30	9
Acute dermal	152-31	9
Acute inhalation	152-32	9
I.V., I.C., I.P. injection	152-33	9
Primary dermal	152-34	9
Primary eye	152-35	9
Hypersensitivity study	152-36	9
Hypersensitivity incidents	152-37	9
Immune response	152-38	9
Tissue culture	152-39	9
Tier II:		
Acute oral	152-40	9
Acute inhalation	152-41	9
Subchronic oral	152-42	12
Acute I.P. I.C.	152-43	12
Primary dermal	152-44	9
Primary eye	152-42	9
Immune response	152-46	9
Teratogenicity	152-47	12
Virulence enhancement	152-48	9
Mammalian mutagenicity	152-49	9
Tier III:		
Chronic feeding	152-50	50
Oncogenicity	152-51	50
Mutagenicity	152-52	9
Teratogenicity	152-53	12
Microbial Pesticide Non-target Organism and Environmental Expression Data Requirements:		
Tier I:		
Avian oral	154-16	9
Avian injection test	154-17	9
Wild mammal testing	154-18	24
Freshwater fish testing	154-19	9
Freshwater aquatic invertebrate testing	154-20	9
Estuarine and marine animal testing	154-21	15
Nontarget plant studies	154-22	9
Nontarget insect testing	154-23	9
Honey bee testing	154-24	9

Product Performance Data Requirements (§ 158.160)

	Guideline reference	Time generally allowed for conducting study (months)
Efficacy of Antimicrobial Agents		
Products For Use on Hard Surfaces	91-2	
Sterilizers:		
AOAC Sporicidal Test		9
Disinfectants (limited efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (general or broad-spectrum efficacy)		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (hospital) or medical environmental efficacy):		
AOAC Use Dilution Test		6
AOAC Germicidal Spray Products Test		6
Fungicides (pathogenic fungi):		
AOAC Fungicidal Test		6
AOAC Use Dilution Method (Fungi only)		6
AOAC Germicidal Spray Products Test (Fungi only)		6
Virucides:		
Virucidal Test (Per virus)		6
Tuberculocides:		
AOAC Tuberculocidal Activity Method		9
Phenol Coefficient(s):		
AOAC Phenol Coefficient Method		6
Additional Microorganisms:		
AOAC Use-Dilution Method		6
AOAC Germicidal Spray Products Test		6
AOAC Fungicidal Test		6
Sanitizers (for non-food contact surfaces):		
Sanitizer Test Non-Food		6
Sanitizing Rinses (food contact surfaces):		
AOAC Available Chlorine Germicidal Equiv. Conc		6
AOAC Germicidal and Detergent Sanitizers Method		6
Products Requiring Confirmatory Data	91-3	
Sterilizers:		
AOAC Sporicidal Test (Done by independent lab)		9
Disinfectants (limited efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (general or broad-spectrum efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (hospital/medical-environmental efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Sanitizers:		
AOAC Germicidal and Detergent Sanitizers Test		6
AOAC Germicidal Equivalent Conc. Test		6
Products For Use on Fabrics and Textiles	91-4	
Laundry Additives—Disinfecting Presoak:		
AOAC Use Dilution Method		6
Actual Washing Machine Test		6
Disinfecting Laundry Additives (non-residual):		
AOAC (Bacteriostatic) Activity of Laundry Additives		6
Actual Washing Machine Test		6
Sanitizing Laundry Additives (non-residual):		
AOAC (Bacteriostatic) Activity of Laundry Additives		6

PRODUCT PERFORMANCE DATA REQUIREMENTS (§ 158.160)—Continued

	Guideline reference	Time generally allowed for conducting study (months)
Actual Washing Machine Test		6
Self-Sanitizing Laundry Additives (residual):		
AOAC (Bacteriostatic) Activity of Laundry Additives		6
AATCC Committee RA31, Test Method 100–1974		6
Actual Washing Machine Test		6
Carpet Sanitizers:		
Sanitizer Carpet RD, EPA		6
Air Sanitizers—No Std. Test (for products w/o glycols)	*91–5	9
Products for Control of Microbial Pests Associated With Human and Animal Wastes; Treatments for Toilet Bowl and Urinal Surfaces	91–7	
Disinfectants:		
AOAC Use-Dilution Method		6
AOAC Germicidal Spray Products Test		6
Sanitizers:		
Sanitizers—Non Food contact surfaces		6
Sanitizers for Toilet and Urinal Bowl Water:		
Test in toilet/unnal		6
Products for Treating Water Systems	91–8	
Potable Water Treatment Units:		
No standard test		6
Swimming Pool Water:		
AOAC Method for Water Disinfectants for Swimming Pools		6
Actual Swimming Pool Test		9
Efficacy of Fungicides and Nematicides		
Products for Control of Organisms Producing Mycotoxins	93–16	27
Efficacy of Vertebrate Control Agents		
Avian toxicants	96–5	
TOX tests		9
LAB acceptance tests		9
LAB efficacy tests		9
Field tests		9
Avian Reppellents	96–6	
TOX tests		9
LAB acceptance tests		9
LAB efficacy tests		9
Field tests		9
Avian frightening agents	96–7	
TOX tests		9
LAB acceptance tests		9
LAB efficacy tests		9
Field tests		9
Bat toxicants and repellents	96–9	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Commensal rodenticides	96–10	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Rodenticides on Farm and Rangelands	96–12	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Rodent fumigants	96–13	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Rodent reproductive inhibitors	96–16	
TOX tests		9
LAB efficacy tests		9
LAB breeding tests		12
Field tests		27
Mammalian predacides	96–17	
TOX tests		9
BAIT acceptance tests		9
LAB efficacy tests		9
Field tests		12

The timeframes in the tables will serve as the basis for determining whether sufficient time has elapsed for a study to have been generated. Based on the date of imposition of data requirements given in Unit II.A, and the timeframes needed for generation of data given in Unit II.C, an applicant seeking conditional registration of a new chemical must satisfy the Agency that he has had insufficient time to generate a particular study that he is unable to submit at the time of application. Prospective applicants should note that, based on the 1982 date of imposition which the Agency presumes to apply in the majority of situations, sufficient time to conduct a large number of the listed studies has already passed. If the timeframes for all required studies have elapsed, the Agency cannot grant conditional registration if any of those studies are missing at the time of application.

If conditional registration is approved, the timeframes in Unit II.C will be used to determine the duration of the conditional registration. Conditional registration will be granted to coincide with the timeframe for generation of the longest study conditionally required. If the results of the conditionally required study trigger a requirement for another (tiered) study, the conditional registration may be extended.

III. Risk Assessment for New Chemicals

The second criterion that must be met for approval of conditional registration is a risk criterion. The Agency must determine that use of the pesticide for the limited period while the required studies are conducted will not cause unreasonable adverse effects on human health or the environment.

Risk assessment for a new chemical will focus on the potential risks from use of the pesticide for the limited time period while required studies are being generated. Since the data base for a new chemical must be virtually complete at the time of application (lacking only those studies recently imposed, or those that the applicant could not reasonably ascertain were required), the Agency should be able to adequately characterize the risks likely in the short term. Approval will be based on the Agency's determination that the data base as a whole provides reasonable assurance of acceptable human and environmental risk during the limited time while studies are being generated.

IV. Public Interest Finding

Finally, the Agency must determine that use of the new chemical during the period of the conditional registration will be in the public interest. In deciding whether this public interest criterion has been satisfied, EPA will consider a number of factors, enumerated in this unit. However, neither the applicant's desire to market the pesticide nor a user's desire to have the product available is sufficient grounds for a public interest finding.

A. Presumption of Public Interest

In certain circumstances, EPA will presume that the use of a pesticide is in the public interest. In these instances, the applicant need not substantiate the public interest finding. Registration of a new pesticide is presumed to be in the public interest for the following uses:

1. A minor crop use. The Agency intends to issue in the **Federal Register** a notice of its minor crop policies.

2. A replacement for another pesticide that is of continuing concern to the Agency. These pesticides are those which have been determined, through the special review process, to present relatively high risk, but whose registration has been continued because the benefits are also relatively high (often because of a lack of alternatives).

3. A use for which an exemption under FIFRA sec. 18 has been granted, if the basis for the exemption was the lack of a registered alternative product.

4. A use against a pest of public health significance.

B. Factors Affecting a Public Interest Finding

For all other new chemicals, EPA will consider a variety of factors pertaining to the need for the chemical, its comparative benefits, risks, and costs. The Agency must determine that (1) there is a need for the new chemical that is not being met by other currently registered pesticides or on-pesticidal alternatives; (2) the new pesticide is comparatively less risky to health or the environment than currently registered pesticides; or (3) the benefits (including economic benefits) from use of the new chemical exceed those of alternative registered pesticides and other available non-chemical techniques.

The Agency may consider any or all of the factors listed below to determine whether the public interest finding can be made. The list is intended to provide guidance to applicants on the considerations that may influence the Agency's decision. In many cases, the data required by Part 158 as part of the application will suffice to support the public interest finding and no information need be submitted by the applicant; however, the burden rests with the applicant to provide additional

data, if requested by the Agency, to substantiate the public interest finding.

1. *Need factors.* Information supporting a judgment that the pesticide will fulfill a unique or essential user need, taking into account:

a. The historical levels of pest infestation that have occurred, and their frequency and distribution (for example, a recurring pest problem).

b. The historical and current control practices that have been recommended or used to alleviate or mitigate the pest problem, both pesticidal and non-pesticidal, and why such control methods are inadequate to meet user needs (for example, pest resistance to existing pesticides, advancing application technologies, or changing agricultural trends). Lack of existing registered pesticides may support a determination of need, but is not sufficient in itself to justify a public interest finding. In the absence of existing registered pesticides, the applicant must address the need for a pesticide method of control compared to non-pesticide methods of control.

c. Marketplace availability of existing registered pesticides (for example, limited production capacity or shortages of essential ingredients that might affect availability).

d. Current or impending regulatory actions on existing pesticides that might affect their availability, usefulness, cost, or acceptance by users.

2. *Composition factors.* Information demonstrating that, compared with alternatives, the product formulation is significantly less hazardous to store, transport, mix, or use, taking into account:

a. Formulaton type (for example, invert emulsion, coarse granules, encapsulated products).

b. Inert ingredients.

c. Formulation characteristics (such as flammability or corrosivity).

3. *Usage factors.* Quantitative estimates of the following, demonstrating the potential usage of the product:

a. Total acres/units projected to be treated by commodity or site.

b. Pounds/gallons active ingredient projected to be applied annually to each site.

c. Geographic areas of use by site.

4. *Performance factors.* Performance data comparing the pesticide both to registered alternative pesticides and to non-chemical methods of treatment, taking into account:

a. The spectrum of pests controlled, specificity of action of the pesticide to the target pest(s), pest distribution, infestation levels at which control is necessary.

b. Comparative efficacy, such as maximum and minimum dosage rates, application timing or frequency, percent control, and yield/quality effects.

c. Adverse crop effects (for example, phototoxicity, delayed maturity, or reduced crop quality).

d. Unique properties of the pesticide or of the formulation that increase performance.

e. Suitability for use in an integrated pest management (IPM) program.

5. *Risk factors.* Data demonstrating the comparative risks to man, other organisms, or the environment of the new pesticide and registered alternative pesticides, taking into account:

a. Acute, subacute and chronic toxicity to man and non-target organisms.

b. Potential for reduced exposure to applicators, mixers, and loaders (for example, water-soluble or closed-system packaging, or improved application techniques).

c. Potential for reduced exposure to farmworkers and pickers (for example, low volatility, pre-plant vs. post-emergence application).

d. Advantageous environmental fate characteristics and properties (for example, rapid degradation in soil or water, low mobility in soil).

6. *Economic factors.* Comparative estimated costs and savings if the new pesticide is used instead of equivalent registered pesticides or alternative non-pesticide methods, taking into account:

a. Projected price of pesticide at user level.

b. Indirect savings to users from application techniques (such as compatibility with other pesticides for tank mixes), pre- and post-application tasks, frequency, timing, dosage rates, ease of harvest, or other application factors.

c. Indirect savings to processors and consumers.

7. *Data base completeness.* If the data base for the new chemical is substantially complete but registered alternative pesticides have significant data gaps, the Agency may take this into account. However, since a new pesticide is expected to be supported by a relatively complete data base, and since the data must demonstrate that the pesticide does not exceed risk criteria, the completeness of the data base alone will not be sufficient to make a public interest finding.

V. Application of the Conditional Registration Policy

This unit gives some examples of how the Agency will apply this policy. The hypothetical examples focus on the first criterion for approval of a conditional registration, i.e., when data requirements were imposed and whether the applicant could determine that a study is required. In each case, before granting the conditional registration, the Agency must also make the risk determination and public interest finding required by FIFRA section 3(c)(7)(C).

1. An application for registration of a food use pesticide which lacks an oncogenicity study is submitted in April 1986. The applicant states that the study has been in progress since the data requirements were issued in 1982, and provides his interim results. In this case, the requirement for the study was clear, and the applicant should and did recognize the requirement, but there has been insufficient time to complete the study. The Agency will consider granting a conditional registration, since the applicant would not have had time to complete the study since the data requirement was imposed. The duration of the conditional registration, if approved, will be the length of time remaining for completion of the study and reporting of results.

2. A person submits an application lacking a study which was contained in the 1982 Part 158 proposal, and which the applicant can clearly discern is required for his product and its uses (for example, an environmental effects study for an outdoor use). The study is one that requires only 12 months to complete. The data requirement was clearly imposed in 1982, and the applicant should therefore have completed the study before submitting his application. The Agency will not consider granting conditional registration for the purpose of generating the study.

3. 3. A person applies for registration of a pesticide for outdoor use, and includes a full set of first tier ecological effects testing. No results from second tier studies are included. Part 158 contains sufficient information to suggest that certain results of the first tier studies require a second tier study. The applicant should have consulted with the Agency as soon as the first tier studies were complete to determine which, if any, of the second tier studies should be conducted. The Agency is likely to reject a conditional registration because the applicant should also have recognized the need to conduct the study or consult with EPA on the need for the study.

3. An applicant submits an application for a non-food use, which does not include chronic health studies. The conditions of Part 158 are such that the applicant cannot unilaterally determine

that these are required for the use patterns proposed. When consulted by the applicant, the Agency was uanble to determine, from a preliminary review of the use patterns proposed, the extent and duration of exposure. Upon its complete review of the application, EPA determines that one or more chronic studies is required. The requirement for the studies is considered to have been imposed when EPA makes this decision, rather than in 1982. The Agency will consider a conditional registration for the purpose of conducting the studies. The duration of the conditional registration, if granted, will be the timeframe for the longest study.

5. An applicant submits an application with a full set of data based upon Part 158. In reviewing the data, however, the Agency finds that it needs exposure data to complete its review. Because exposure data are not generically required by Part 158, (being specific to the use patterns proposed), the data requirement is clearly not foreseeable by the applicant. The Agency will consider granting conditional registration while the data are being generated. The Agency will determine a timeframe for the conditional registration, sufficient for conduct and reporting of the study, including development and approval of acceptable protocols.

6. A company has a reproduction study in progress, based on existing Agency protocols. The 39-month study is into its 15th month when the Agency announces that certain critical elements of the protocol have been changed. The producer should consult immediately with the Agency to determine whether his ongoing testing will be sufficient when completed, or whether the revisions to the Agency protocol call for modifications to the testing regimen (or the need to reconduct the study entirely). If the Agency determines that the study must be reconducted, the Agency will consider a conditional registration, which would be granted for 39 months from the date of the protocol change (or whatever term is appropriate for the new protocol). If the company chooses to continue testing without consulting the Agency, and the study thereafter proves to be unacceptable, EPA will not grant a conditional registration until the data requirement has been satisfied.

VI. Tolerances Associated With Conditional Registration

If the Agency determines that a conditional registration may be issued under FIFRA section 3(c)(7)(C), any required tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) will be issued to run concurrent with the conditional registration. Such tolerances will expire a year after the scheduled expiration of the conditional registration to allow sufficient time for legally treated crops to move through channels of trade.

VII. Publication in the Federal Register

As provided in proposed § 152.102, the Agency will issue for publication in the **Federal Register** a notice of receipt of each application for registration of a new chemical, and will provide opportunity for comment by interested parties. Comments will be considered in making the public interest finding.

The Agency will also issue for publication in the **Federal Register** a notice announcing the issuance of a conditional registration for a new chemical. The notice will describe the new chemical, list missing data and the dates for submission, summarize the Agency's conclusions about potential risk, and explain the basis for the public interest finding.

VIII. Conditions of Registration

The Agency will establish the conditions of registration when it approves the conditional registration of a new chemical. The applicant must consent to the conditions of registration before the Agency will approve the application, so that there will be no question later of his knowledge of the conditions being imposed. Assent to the conditions is normally done at the time the applicant responds to the Agency's preliminary approval of the application. The following conditions will routinely be imposed on all such registrations:

1. The registrant must submit specified studies according to a schedule established by the Agency. The Agency may also require the submission of interim reports to gauge satisfactory progress toward completion of the studies.

2. The registrant must submit annual reports of production of the pesticide product, by November 15 each year. This report is required for the Agency to submit its mandatory report to Congress under FIFRA section 29, and is to be submitted to the Registration Division. This report is a separate requirement from reporting required under FIFRA section 7, which is submitted to the Office of Compliance Monitoring.

3. The conditional registration will expire upon a date specified by the Agency, based upon the length of the longest study required. If the data are received by the data of expiration, the registration will be extended day by day until the Agency has reviewed the data and determined whether they fulfill the conditions of the registration.

The Agency will notify the registrant of the date of expiration, and may permit disposition of existing stocks after the expiration date, consistent with its assessment of the pesticide's risks.

Dated: February 24, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-4489 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-64002; FRL-2977-1]

Pesticide Programs; Policy Statement on the Inability To Contact Certain Requirements of Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has been unable to contact certain registrants of pesticide products. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136, et seq., failure to maintain a correct and current address with the EPA and on pesticide product labels means that the registration is not in compliance with the statute and is grounds for cancellation. Therefore, the Agency has decided that it may initiate, from time to time, cancellation proceedings for registrations held by registrants whom EPA, after good faith efforts, has been unable to contact.

EFFECTIVE DATE: Effective on March 5, 1986. .

FOR FURTHER INFORMATION CONTACT:

Jack E. Housenger, Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7889).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs its ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation where some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

The legal authority under which cancellation of the pesticide registrations of registrants the Agency is unable to contact is section 6(b) of FIFRA which allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act . . . ." Section 3(c)(1)(A) of FIFRA and 40 CFR § 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product.

Additionally, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to delivery to any person a misbranded pesticide. Under section 2(q)(2)(C)(i) of FIFRA, failure to have the registrant's correct address on the lable of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit to EPA a correct and current address and include such address as part of the label of its pesticide products is grounds for cancellation of that registrant's registrations and is in violation of the Act's provisions.

The Agency has therefore decided that it may initiate cancellation proceedings for registrations held by those registrants whom EPA has been unable to contact. Notices of the Agency's intent to cancel such a registrant's registrations will be published periodically in the **Federal Register**. The Agency will issue these notices only after good faith efforts to contact the registrant have failed.

Dated: February 19, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-4483 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee Meeting

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Monday, March 24, 1986 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of Eximbank's Financial Report, a review of the Advisory Committee's duties and goals, a discussion of Eximbank's Charter renewal legislation, the status of I-Match II, the status of Mixed Credit legislation and negotiations, a briefing on the status of the Competitiveness Report for 1985, and a review of Foreign Content issues.

Public participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Hart Fessenden,

General Counsel.

[FR Doc. 86-4698 Filed 3-4-86; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are fund in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010739-001.

Title: Nedlloyd/Barber Blue Sea North America-Middle East Reciprocal Space Charter & Coordinated Sailing Agreement.

Parties:

Barber Blue Sea (N.A.), Inc.
Nedlloyd Lijnen BV

Synopsis: The proposed amendment would (1) authorize the parties to pool revenues in the trade and to discuss and agree on rates and terms of transportation in portions of the trade in which the parties are not members of conferences; (2) add provisions pertaining to membership, neutral body policing, prohibited acts, independent action, consultations; and shippers' requests and complaints; and (3) make various other non/substantive changes. In addition, this amendment changes the agreement's classification for a sailing agreement (213) to a cooperative working agreement (302).

Dated: February 28, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-4706 Filed 3-4-86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010854-001.

Title: Portland Terminal Agreement.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.
The Port of Portland (Port)

Synopsis: This agreement establishes rates and provisions for the levels of container throughput the Port would charge Evergreen on inbound empty containers discharged by the Port at Terminal 6. The agreement also provides for the automatic increase or reduction of the rates based on the percentage of increase of the Port's throughput rates.

Agreement No.: 213-010890.

Title: Costa/Nedlloyd Space Charter and Sailing Agreement

Parties:

Costa Container Lines, S.p.A.
Nedlloyd Lijnen BV

Synopsis: The proposed agreement would permit the parties to coordinate sailings, cross-charter Ro/Ro space and agree on certain ocean carrier services in the trade from ports in Italy, France, and Spain (including the Canary Islands) to ports on the U.S. Atlantic and Gulf coasts.

Agreement No.: 217-010891.

Title: Hong Kong Islands Line America S.A./Gearbulk Container Service Space Charter and Sailing Agreement.

Parties:

Hong Kong Islands Line America S.A. (HKIL)
Gearbulk Container Service (GBCS).

Synopsis: The proposed agreement would permit HKIL to charter space on GBCS vessels and to agree on certain ocean carrier services in the trade from the Far East to the U.S. Pacific Northwest.

Dated: February 28, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-4707 Filed 3-4-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; Proposed Amendment of Systems of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed Amendment of Privacy Act Systems of Records.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is proposing to amend its Privacy Act Systems of Records to permit disclosures to consumer reporting agencies.

DATE: The proposed amendment will take effect without further notice on April 11, 1986, unless comments received on or before that date cause a contrary determination to be made.

ADDRESS: Send written comments to Ted Chasekelson, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Ted Chaskelson, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427 (202) 653-5305.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749, 31 U.S.C. 3711(f)) establishes an exception to the Privacy Act of 1974, in that it authorizes disclosure of information, to a consumer reporting agency, that an individual is responsible for a debt to the United States. The Debt Collection Act requires, however, that a notice be published in the Federal Register, pursuant to 5 U.S.C. 552a(e)(4), stating that information contained in agency systems of records may be disclosed to a consumer reporting agency.

FMCS therefore proposes to amend two of its systems of records: FMCS-I, Agency Internal Personnel Records, and FMCS-II, Agency Pay Records. These systems were last published in the Privacy Act Issuances, 1984 Compilation, at p. 377.

For both systems of records, it is proposed that a new heading will be added immediately after the heading for "routine uses." The new heading, and the notice following it will state:

* * * * *

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may made from this system of records, to consumer reporting agencies, that an individual is responsible for a debt to the United States. Such Disclosures will be made pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3711(f)) to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

Dated: February 28, 1986.

Duane M. Buckmaster,

Deputy Director.

[FR Doc. 86-4773 Filed 3-4-86; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86-3508), published at page 6036 of the issue for Wednesday, February 19, 1986.

Comments on this application must be received not later than March 10, 1986.

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4702 Filed 3-4-86; 8:45 am]

BILLING CODE 6210-01-M

European American Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *European American Bancorp*, New York, New York; to engage *de novo* through its subsidiary, EAB Mortgage Company, Inc., Uniondale, New York, and thereby engage in servicing the Applicant's existing residential and commercial mortgage portfolio; the origination, closing and servicing of new residential first and second mortgages; the servicing of new commercial mortgages; the purchase of existing

residential first and second mortgages, with or without servicing, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 20, 1986.

2. *Westpac Banking Corporation,* Sydney, Australia; to engage *de novo* through its subsidiary, American and Australian Portfolio Managers, Inc., New York, New York, in providing investment advisory services, pursuant to § 225.25(b)(4) of Regulation Y. Comments on this application must be received not later than March 20, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *McLaughlin Holding Company,* Moline, Illinois; to engage *de novo* through its subsidiary, MBC Financial Corp., Moline, Illinois, in making and servicing loans as a commercial finance company, and leasing personal property as the functional equivalent of an extension of credit to the commercial lessee of the property, pursuant to § 225.25 (b)(1)(iv) and (b)(5), respectively.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Firstbank Holding Company of Colorado,* and its direct subsidiary, *Firstbank Holding Company,* both of Lakewood, Colorado; to expand the geographic scope of their previously approved activities of underwriting, as reinsurers, credit life and credit disability insurance directly related to extension of credit by their subsidiaries to including underwriting such coverages in the State of California, pursuant to § 225.25(b)(9) of Regulation Y. Comments on this application must be received not later than March 18, 1986.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pacific Inland Bancorp,* Anaheim, California; to engage *de novo* through its subsidiary, Pacific Inland Venture Corp., Anaheim, California, in providing portfolio investment advice, pursuant to § 225.25(b)(4) of Regulation Y.

2. *Ventura County National Bancorp,* Oxnard, California; to engage *de novo* through its subsidiary, Ventura Commercial Finance Company, Oxnard, California, in extensions of credit on a fully secured basis to commercial customers in diverse industries and servicing of all loans made, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 19, 1986.

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4703 Filed 3-4-86; 8:45 am]

BILLING CODE 6210-01-M

Saver's Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in secton 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Saver's Bancorp, Inc.,* Littleton, New Hampshire; to acquire 100 percent of the voting shares of Dartmouth Savings Bank, Hanover, New Hampshire.

2. *Saver's Bancorp, Inc.,* Littleton, New Hampshire; to acquire 100 percent of the voting shares of United Savings Bank, Manchester, New Hampshire. Comments on this application must be received not later than March 22, 1986.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *State Bancorp, Inc.,* New Hyde Park, New York; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Long Island, New Hyde Park, New York. Comments on this application must be received not later than March 22, 1986.

C. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.,* Boyertown, Pennsylvania; to acquire 20 percent of the voting shares of Constitution Bank, Philadelphia, Pennsylvania (in organization). Comments on this application must be received not later than March 22, 1986.

D. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *S&T Bancorp, Inc.,* Indiana, Pennsylvania; to merge with Union Bancorp of DuBois, Pennsylvania, Inc., DuBois, Pennsylvania, thereby indirectly acquiring The Union Banking & Trust Company of DuBois, DuBois, Pennsylvania.

2. *Union National Corporation,* Lebanon, Pennsylvania; to acquire 100 percent of the voting shares of Valley National Bank, Freeport, Pennsylvania.

E. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation,* Charlotte, North Carolina; to acquire 100 percent of the voting shares of First Bankers Corporation of Florida, Pompano Beach, Florida.

Applicant will thereby merge First Bankers Corporation of Florida, Pompano Beach, Florida with Atlantic Bancorporation, Jacksonville, Florida, an existing subsidiary of Applicant, thereby indirectly acquiring the following banks: The First Bankers, N.A., Pompano Beach; The First Bankers of Indian River County, Vero Beach; The First Bankers of Volusia County, N.A., New Smyrna Beach; The First Bankers of Orange County, N.A., Winter Garden; The First Bankers of Florida, N.A., Cape Canaveral; The First Bankers of Palm Beach, N.A., Boca Raton; The First Bankers of Polk County, Haines City; The First Bankers of Tampa Bay, N.A., St. Petersburg; and The Island Bank, Holmes Beach, all located in the State of Florida.

2. *United Bankshares, Inc.,* Parkersburg, West Virginia; to merge with Intermountain Bankshares Inc., Charleston, West Virginia, thereby indirectly acquiring Kanawha Banking & Trust Company, N.A., Charleston, West Virginia and Half Dollar Trust and Savings Bank, Wheeling, West Virginia. Comments on this application must be received not later than March 22, 1986.

F. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104

Marietta Street, NW., Atlanta, Georgia 30303:

1. *Peoples Exchange Bancshares, Inc.*, Beatrice, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Peoples Exchange Bank of Monroe County, Beatrice, Alabama. Comments on this application must be received not later than March 22, 1986.

G. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation*, Urbana, Illinois; to acquire 100 percent of the voting shares of Champaign County Bank and Trust Company, Urbana, Illinois.

2. *Marshall and Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of The Home State Bank of South Milwaukee, South Milwaukee, Wisconsin.

H. *Federal Reserve Bank of St. Louis* (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation*, Grenada, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Grenada Bank, Grenada, Mississippi. Comments on this application must be received not later than March 22, 1986.

I. *Federal Reserve Bank of Minneapolis* (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Roscoe Financial Services, Inc.*, Roscoe, South Dakota; to become a bank holding company by acquiring 90.3 percent of the voting shares of First State Bank of Roscoe, Roscoe, South Dakota.

J. *Federal Reserve Bank of Dallas* (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Capital Reserves Group, Inc.*, College Station, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of UnitedBank-College Station, N.A., College Station, Texas. Comments on this application must be received not later than March 22, 1986.

2. *Security Dallas Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank, Dallas, Texas. Comments on this application must be received not later than March 22, 1986.

K. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Montecito Bancorp*, Santa Barbara, California; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Montecito, Santa Barbara, California.

2. *Puget Sound Bancorp*, Tacoma, Washington; to acquire 100 percent of the voting shares of Savings Bank of Puget Sound, FSB, Seattle, Washington.

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4704 Filed 3-4-86; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares, Inc.; Application To Engage de Novo in Nonbanking activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(C)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1986.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas American Bancshares, Inc.*, Fort Worth, Texas; to expand the activities of its discount brokerage subsidiary, Tabrokerage Inc., Fort Worth, Texas, to include acting as broker in the purchase and sale of gold and silver bullion and coins solely on the order of or for the account of customers. The Board has determined that this activity is permissible for bank holding companies, *First Interstate Bancorp*, 71 Federal Reserve Bulletin 467 (1985).

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4705 Filed 3-4-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0049]

Velsicol Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Velsicol Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol dibenzoate in polyvinyl acetate coatings intended to contact food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3894) has been filed by Velsicol Chemical Corp., 341 East Ohio Street, Chicago, IL 60611, proposing that §176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of diethylene glycol dibenzoate in polyvinyl acetate coatings intended to contact food.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985, (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4696 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0047]

International Drug Scheduling; Convention on Psychotropic Substances; Nonbarbiturate Sedatives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, illicit trafficking, and medical utility of 25 drug substances of the nonbarbiturate sedative class. This information will be considered in preparing the United States' response to a World Health Organization (WHO) request for assistance in obtaining data on these drugs. WHO will consider the United States' response in deciding whether to recommend that the United Nations' Commission on Narcotic Drugs (CDD) place certain international restrictions, on these drugs. This notice requesting information is required by law.

DATE: Comments by April 4, 1986..

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Shehan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the Convention on Psychotropic Substances of 1971 (Psychotropic Convention). Article 2 of the Psychotropic Convention provides that a party to the treaty or WHO shall, if it has information on a drug substance that would justify the imposition of international control or a change in the degree of such control, provide the Secretary-General of the United Nations with such information. The Secretary-General in turn notifies the parties to the Psychotropic Convention of this information. The Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) provides that, when the United States has received an Article 2 notice from the Secretary-General, the Secretary of State shall transmit the notice to the Secretary of Health and Human Services. The Secretary of Health and Human Services then publishes the notice in the **Federal Register** and provides the interested persons an opportunity to submit comments that will assist the Department of Health and Human Services (HHS) in preparing a response to the WHO request.

The agency has received the WHO notice and is including it in this notice. A copy of the WHO is on display in FDA's Docket Management Branch (address above). The notice reads as follows:

UNITED NATIONS—NATIONS UNIES

Vienna International Centre

NAR/CL.22/1985

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following twenty-five substances:

1. Acecarbromal
2. Bromisoval
3. Buspirone
4. Captodiame
5. Carbromal
6. Chloralose
7. Chlorhexadol
8. Chlormethiazole edisylate
9. Dichloralphenazone
10. Diethylallylacetamide
11. Etodroxizine
12. Etomidate
13. Fenpentadiol
14. Hexapropymate
15. Hydroxyhenamate
16. Methylpentynol
17. Phenprobamate
18. Propanidid
19. Propiomazine
20. Prothipendyl
21. Pyrithyldione
22. Sodium oxybate
23. Triclofos
24. Trimetozine
25. Valnoctamide

The WHO 24th Expert Committee on Drug Dependence, to be convened from 6 to 10 April 1987, will examine the twenty-five substances listed above to determine if any proposals should be made concerning their possible control under provisions of the Convention on Psychotropic Substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that a report must be prepared on this subject for a WHO review group which will meet well in advance of the 24th ECDD, it would be appreciated if the information could be transmitted to the Secretary-General by 20 May 1986. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna, International Centre, P.O. Box 500, A-1400 Vienna, Austria.

5 December 1985

UNITED NATIONS DIVISION OF NARCOTIC DRUGS

Vienna International Centre
A-100 Vienna, Austria

Questionnaire for Data Collection for the Use by the World Health Organization and the Committee on Narcotic Drugs of the Economic and Social Council

Substance Reported on _____

1. Availability of substance (registered, marketed, dispensed, etc.).

2. National control measures applied to the substance as compared to measures applied to narcotic drugs or psychotropic substances (e.g., prescription requirements, licensing of manufacture and distribution, control of import and export, etc.).

3. Extent of actual abuse of the substance at the national level.

4. Degree of seriousness of the public health and social problems * associated with the abuse of the substance reported on under 3 above.

5. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.

6. Identification of the substance as of local or foreign manufacture and identification of any commercial markings on packages seized in the illicit traffic.

7. Existence of clandestine laboratories manufacturing the substance.

Therefore, as required by section 201(d)(2)(A) of the CSA (21 U.S.C. 811(d)(2)(A)), FDA, on behalf of HHS, invites interested persons to submit comments on the 25 drugs listed above.

Of the 25 drugs listed in the WHO notice, available information indicates that 11 have a marketing history in the United States. Six of these drugs, acecarbromal, buspirone,

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* Example of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behavior problems, criminality, etc. For a thorough examination of the question, please refer to the WHO publication entitled "Assessment of Public health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances."

dichloralphenazone, etomidate, propiomazine, and triclofos are currently available in the United States. Drugs previously marketed in the United States include bromisoval, captodiame, carbromal, methylpentynol, and valnoctamide. Chlorhexadol is controlled domestically under Schedule III of the CSA, while dichloralphenazone is controlled under Schedule IV.

FDA will use data and information received in response to this notice to compile an information package. FDA may also include information it independently gathers. The information package will be forwarded by HHS through the Department of State to WHO. WHO will consider the information deciding whether to recommend international control of any of these drugs. International control could result in, among other restrictions, imposition of prescription status, recordkeeping requirements for manufacturers, and limits upon quantities imported and exported. The information package sent by HHS to WHO will not include any recommendations as to whether international control should be imposed. HHS will defer making any such recommendations until after WHO has made its own recommendations to CND. The WHO recommendations will be made in 1987, sometime after the meeting of the WHO Expert Committee on Drug Dependence which is scheduled to meet in April 1987. Any HHS recommendations on international control will be preceded by another **Federal Register** notice soliciting public comment, as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before April 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be submitted in the format given in the WHO questionnaire for Data Collection. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The rquirements were approved and assigned OMB control number 0910–0226.

Dated: February 28, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–4832 Filed 3–4–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 80P–0024 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Donovan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of the performance standard for laser products (21 CFR 1040.11(c)).

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below:

Docket No.	Organization granted the variance	Demonstration laser product	Effective date, termination date
80P–0024 (extension)	Mr. Brian B. O'Brien, 15 Country Drive, Weston, MA 02193.	Brian B. O'Brien Laser projectors, Model No. 100 Series, and for shows assembled and produced by Brian B. O'Brien incorpating these projectors.	Dec. 31, 1985–Dec. 31, 1987
82P–0118 (extension and amendment).	J. Douglas Falk Engineering, 186 Paul Court, Hillsdale, N.J. 07642.	Groundstar Series laser projectors, laser light sculpture projectors, and laser light shows manufactured, assembled, and produced by J. Douglas Falk Engineering.	Jan. 10, 1986–Apr. 30, 1988.
83V–0170 (extension)	John Young Planetarium, Orlando Science Center, 810 East Rollins Street, Orlando, FL 32803.	Orlando Science Center, John Young Planetarium, laser light shows incorporating the Class IV argon OSC Projection System Number One.	Dec. 13, 1985–June 17, 1987
83V–0182 (extension)	South Florida Museum and Bishop Planetarium, 201 10th Street West, Bradenton, FL 33505.	Laser light shows assembled and produced by Bishop Planetarium incorporating a Laser Systems Development Corporation certified Model C–3 Series, laser projector.	Nov. 21, 1985–June 15, 1987
84V–0376 (extension)	Shawnee Brittan Productions, 1500 United Founders Tower, Oklahoma City, OK 73112.	Shawnee Brittan Productions Laser Space Theater laser light shows incorporating the Laser Presentations Model LP–4 laser light show projector.	Jan. 10, 1986–Dec. 19, 1987
85V–0041	Laser Theatrics, E 402 Wedgewobd No. 80, Spokane, WA 99208.	Laser Theatrics laser light show incorporating a Class IV Laser Fantasy Productions, Inc. (aka Coherent Innovations, Inc.) Rainbow 3AK laser projector with Ar, Kr, Ar/Kr, or HeNe laser systems.	Dec. 23, 1985–Dec. 23, 1987

Docket No.	Organization granted the variance	Demonstration laser product	Effective date, termination date
85V-0189 (amendment)	Computer Graphics, c/o Stage Sound, Inc., 4708 E. Van Buren Street, Phoenix, AZ 85008.	Laser light show and projection systems assembled and produced by Computer Graphics incorporating Laser Media's Stingray or LM projectors or Laser Systems Development Corporation's X-Y scanners and Class IV Ar, Kr, or Ar/Kr ion laser systems.	Dec. 30, 1985-June 24, 1987
85V-0239 (amendment)	Laser Dreams, 1461 Church Street, San Francisco, CA 94131	Laser Dreams laser light shows incorporating laser projection systems manufactured by Laser Dreams.	Jan. 15, 1986-May 30, 1987
85V-0298	Laser Light Systems, 731 Layne Court, Palo Alto, CA 94306.	Laser Light Systems' laser light shows and the incorporated laser projection system consisting of Laser Systems Development Corporation Model R3, C3 or C6 optics modules and Class IV argon or krypton lasers such as Spectra-Physics' Models 164 or 171 or Laser Light Systems' Model LL1.	Jan. 9, 1986-Jan. 9, 1988.
85V-0305	Sea World, 1720 South Shores Road, San Diego, CA 92109.	Sea World Laser Light Shows, such as "Summer Nights," incorporating Laser Media LMS Series Class IV ion laser projection systems.	Dec. 31, 1985-Dec. 31, 1987
85V-0341	Video Interactive Sports, Limited, dba Photon Amusements, 6025 Chimney Rock, Houston, TX 77081.	Photon Amusements laser light show assembled and produced by Video Interactive Sports, Ltd. incorporating the Laser Media, Inc. Model LMS and Fiberay laser projector devices with a Class IV argon ion laser.	Jan. 10, 1986-Jan. 10, 1988.
85V-0364	P.O.K. Limited Partnership, dba Photon Amusements, 202 Grant Avenue, Seaside Heights, NJ 08751.	Photon Amusements laser light show assembled and produced by P.O.K. Limited Partnership incorporating the Laser Media, Inc. Model LMS and Fiberay laser projector devices with a Class IV argon ion laser.	Dec. 2, 1985-Dec. 2, 1987

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: February 25, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health

[FR Doc. 86-4695 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-91-M

[Docket No. 86M-0029]

Mansfield Scientific, Inc.; Premarket Approval of the Mansfield Scientific Heart Trak™ Coronary Balloon Dilatation Catheter System

Correction

In the issue of Monday, February 10, 1986, in the document beginning on page 4993 in the third column, make the following corrections:

1. On page 4993, third column, in the "**SUMMARY,**" fourth line, "Mansfiled" should read "Mansfield". In the **DATE** paragraph, first line, remove the "1" before "Petitions".

2. On page 4994, second column, in the file line at the end of the document, "FR Doc. 86-2781" should read "FR Doc. 86-2784".

BILLING CODE 1505-01-M

[Docket No. 86M-0054]

Toray Industries (America), Inc.; Premarket Approval of Toray (Astifilcon A) Soft Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Toray Industries (America), Inc., New York, NY, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Toray (astifilcon A) Soft Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 14, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On September 24, 1984, Toray Industries (America), Inc., New York, NY 10017, submitted to CDRH an application for premarket approval of the Toray (astifilcon A) Soft Contact Lens. The spherical Toray (astifilcon A) Soft Contact Lens is indicated for daily wear or extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic. The lens may be worn by persons who may exhibit astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from plano to −20.00 D and +10.00 D to +20.00 D and is to be disinfected using a heat lens care system only.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 24, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the Toray (astifilcon A) Soft Contact Lens states that the lens is to be disinfected using only the recommended heat disinfection system. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the

Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 4, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5 53).

Dated: February 26, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–4694 Filed 3–4–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Filing of Plats of Survey; Nevada

February 24, 1986.

The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated:

Mount Diablo Meridian, Nevada

T. 38 N., R. 62 E., 1/7/86, Dependent Resurvey
T. 8 N., R. 30 E., 1/7/86, Supplemental Plat
T. 8 N., R. 56 E., 2/21/86, Dependent Resurvey
T. 9 N., R. 56 E., 2/21/86, Dependent Resurvey and Section Subdivision.

These surveys were executed to meet certain administrative needs of this Bureau.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning these surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86–4795 Filed 3–4–86; 8:45 am]

BILLING CODE 4310–HC–M

Record of Decision for Federal Coal Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Record of Decision.

SUMMARY: This notice is to inform the public of the availability of the Secretary of the Interior's Record of Decision (ROD) on whether to continue the 1979 Federal coal leasing program, as modified, or to adopt an alternative. The alternatives considered by the Secretary were fully described in the Final Environmental Impact Statement Supplement to the (1979) Federal Coal Management Program published in October 1985.

ADDRESS: Copies of the ROD may be obtained by contacting the Bureau of Land Management, Office of Public Affairs (130), Room 5600, 18th and C Streets, NW., Washington, DC 20240, telephone (202) 343–5717.

FOR FURTHER INFORMATION CONTACT: Walt Rewinski or Tom Walker, Division of Solid Mineral Leasing, Bureau of Land Management (650), 18th and C Streets NW., Washington, DC 20240, telephone (202) 343–4636.

SUPPLEMENTARY INFORMATION: On February 26, 1986, the Secretary of the Interior announced his decision to continue a Federal coal program which employs regional coal activity planning and lease-by-application procedures for competitive leasing of Federal coal. The Secretary's decision culminates a comprehensive program review which included the 1983–1984 examination of fair market value policy for Federal coal leasing by the Linowes Commission; the Office of Technology Assessment's (OTA) investigation of environmental protection in the Federal coal leasing program; and the Secretary's commitment to re-examine the basis for a Federal coal leasing program.

As part of the Secretary's coal program review, the Department prepared a supplement to the 1979 Final Environmental Impact Statement for the Federal Coal Management Program. This supplement was prepared in recognition that economic and other conditions had changed significantly since 1979, and that numerous changes to the program had been made or proposed since 1979. The supplement compared the environmental impacts of the following four alternatives: (1) The proposed action, which is the existing program as modified by Linowes, OTA, and Departmental changes; (2) leasing-by-application; (3) preference right and emergency leasing; and (4) no new Federal leasing. The Secretary has adopted alternative 1, the proposed action. Therefore, pursuant to the Council on Environmental Quality's regulations at 40 CFR 1506.6b, the Secretary's ROD for the Federal coal leasing program is being made available to the public, and may be obtained as noted under ADDRESS, above.

February 28, 1986.

Robert F. Burford,

Director.

[FR Doc. 86–4766 Filed 3–4–86; 8:45 am]

BILLING CODE 4310–84–M

Supplement to the Western Oregon Program, Management of Competing Vegetation; Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the supplement to the western Oregon program—Management of Competing Vegetation Draft EIS (supplemental DEIS).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Supplement to the Draft Environmental Impact Statement for Management of Competing Vegetation on lands in western Oregon. The proposal involves implementing a vegetation management program on public lands administered by the Bureau of Land Management. The Supplement presents a Risk Assessment and Worst-Case Analysis of effects on human health from using herbicides.

A limited number of copies of the Supplement and the original Draft EIS are available upon request at the following BLM offices:

Office of Public Affairs, 18th and C Streets, Washington, DC 20240, Phone (202) 343–5717
Oregon State Office, 825 N.E. Multnomah, P.O. Box 2965, Portland, Oregon 97208, Phone (503) 231–6277
Coos Bay District Office, 333 54th Street, Coos Bay, Oregon 97420, Phone (503) 269–5880
Eugene District Office, 1255 Pearl Street, Eugene, Oregon 97401, Phone (503) 687–6651
Medford District Office, 3040 Biddle Road, Medford, Oregon 97501, Phone (503) 776–4174
Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, Phone (503) 672–4491.
Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97302, Phone (503) 399–5646

Reading copies will be placed in the following libraries: Portland State University, Portland; Oregon State University, Corvallis; University of Oregon, Eugene; Chemeketa Community College, Salem; Lane Community College, Eugene; Umpqua Community College, Roseburg; Linn-Benton Community College, Albany; and public libraries in: Applegate, Bandon, Brookings, Canyonville, Coos Bay, Coquille, Corvallis, Cottage Grove, Drain, Eugene, Gold Beach, Grants Pass, Illinois Valley, Klamath Falls, Medford, Myrtle Creek, North Bend, Oakland, Port Orford, Reedsport, Riddle, Roseburg, Salem, Springfield, Sutherlin, Williams, Winston and Wolf Creek.

Written comments on the Supplemental DEIS should be sent to: Oregon State Director, Bureau of Land Management, Attention: R. Gregg Simmons, P.O. Box 2965, Portland, Oregon 97208.

Comments should be postmarked on or before April 30, 1986 to be considered in preparation of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Gregg Simmons, Oregon State Office, Phone (503) 231–6272.

Dated: February 19, 1986.

William G. Leavell,

State Director.

[FR Doc. 86–4774 Filed 3–4–86; 8:45 am]

BILLING CODE 4310–33–M

[A–20637]

Public Land Exchange in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange, Public Land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridan

T. 25 N., R. 19 W.,
Sec. 6, lot 7, SE¼SW¼, and SE¼;
Sec. 8, all;
Sec. 18, lot 1–4, inclusive and E½W½.
Containing 1,197.17 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Dale D. Smith of Arivaca, Arizona:

Gila and Salt River Meridan

T. 28 N., R. 16 W.,
Sec. 5, lots 1–4, inclusive, S½N½, and S½;
Sec. 7, lots 1–4, inclusive, E½, and E½W½.
T. 29 N., R. 16 W.,
Sec. 31, lots 1 and 2, NE¼, and E½NW¼;
Sec. 33, all.
Containing 2,238.32 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States—(a) right-of-way for ditches and canals pursuant to the Act of August 30, 1890; and (b) all the oil and gas and with it the right to prospect for, mine, and remove same.

2. Subject to—(a) any restrictions that may be imposed by Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 82–1 of May 17, 1982; (b) such rights for road right-of-way purposes as the Mohave County Board of Supervisors may have under R.S. 2477 (43 U.S.C. 932); (c) road rights-of-way A–19014, A–19015, A–19016, and A–19017; and (d) water pipeline right-of-way A–6178.

Private lands to be acquired by the United States will be subject to the following reservation:

1. All minerals are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 89 of Deeds, page 106 and 110 and in Book 86 of Deeds, page 49.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing law. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 25, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86–4743 Filed 3–4–86; 8:45 am]

BILLING CODE 4310–32–M

[Ser. No. CA 17664]

Realty Action; Exchange of Public and Private Lands in Fresno, Madera, and Nevada Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on the proposed exchange of public and private lands.

SUMMARY: This notice is to advise the public that the comment period for the proposed exchange between the Bureau of Land Management and the Santa Fe Pacific Realty Corporation, Inc. is being extended until March 14, 1986.

SUPPLEMENTARY INFORMATION: The publication of a Notice of Realty Action in the **Federal Register** on January 2, 1986, Vol. 51, No. 1, pages 128–129, established a 45-day comment period. The purpose of the Notice was to offer an opportunity for interested parties to submit comments on a proposed exchange of public and private lands

between the Bureau of Land Management and the Santa Fe Pacific Realty Corporation. In response to the interest expressed the comment period is being extended.

DATE: Written comments on the proposed exchange must be received by March 14, 1986.

ADDRESS: Written comments should be sent to: Bakersfield District Manager, Bureau of Land Management, 800 Truxtun Avenue, Rm. 1311, Bakersfield, California 93301. Written comments will be forwarded to the State Director who may modify or vacate this realty action.

FOR FURTHER INFORMATION CONTACT: David Howell, Area Manager, Bureau of Land Management, Hollister Resource Area, P.O. Box 365, Hollister, CA 95023.

Dated: February 25, 1986.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 86-4744 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-40-M

[W-96731]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-96731 for lands in Johnson County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termiantion.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-96731 effective November 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-4746 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-22-M

[W-83585]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-83585 for lands in Johnson County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-83585 effective April 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-4747 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Aniakchak National Monument Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Introduction of guests.
(3) Review and discuss input on draft hunting plan.
(4) Finalize recommendations.
(5) Old business.
(6) New business.
(7) Adjourn.

DATE: The meeting will begin at 9:00 a.m. on March 12, 1986, and conclude the afternoon of March 13, 1986.

ADDRESS: The meeting will be held at the Fish and Wildlife Service, Conference Room, King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT: David Morris, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613, Phone (907) 246-3305.

SUPPLEMENTARY INFORMATION: The Aniakchak National Monument Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Robert L. Peterson,

Acting Regional Director.

[FR Doc. 86-4733 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-70-M

Wrangell-St. Elias National Park Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Wrangell-St. Elias National Park Subsistency Resource Commission. The following agenda items will be discussed:

1. Status of State subsistence hunt regulations on preserved lands and 1985 Tier 11 caribou hunt.
2. Review and finalize commission recommendations.
   a. Predator control.
   b. Northway as resident zone.
   c. Aircraft access.
   d. General management plan.
3. Part Resource Management Plan—Brad Cella.

DATES: The meeting of the Wrangell-St. Elias Subsistence Resource Commission will be held at the Park Headquarters in Glennallen, Alaska, Mile 105 Richardson Highway, starting at 2:00 p.m. on April 7 and continuing at 8:30 a.m. on April 8.

FOR FURTHER INFORMATION CONTACT: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588.

SUPPLEMENTARY INFORMATION: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: February 25, 1986.

Robert L. Peterson,

Regional Director, Alaska Region.

[FR Doc. 86-4734 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-70-M

Overseas Private Investment Corporation

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. if you anticipate commenting on the form, but find the time allotted to prepare comments will prevent you from submitting them promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation (OPIC), 1615 M Street, NW., Washington, DC 20527. Telephone: (202) 457–7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–7231.

Summary of Form Under Review

Type of Request: Extension of expiration date without substantive change.

Title: OPIC Opportunity Bank Company Profile.

Form Number: OPIC–82.

Frequency of Use: Once per U.S. company registration.

Type of Respondent: Business or other for profit.

Standard Industrial Classification: All.

Description of Affected Public: U.S. Companies.

Number of Responses: 500.

Reporting Hours: 15 minutes per response.

Federal Cost: $2,922.50.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): Information will be submitted by U.S. businesses seeking opportunities abroad. Opportunity Bank program provides chance for U.S. business to attract business proposals from potential joint venture partners and to consider expanding their operations with foreign business contacts.

Dated: February 20, 1986.

Robert O'Sullivan,

Office of the General Counsel.

[FR Doc. 86–4735 Filed 3–4–86; 8:45 am]

BILLING CODE 3210–01–M

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that the Agency has mnade such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form, but find the time allotted to prepare comments will prevent you from submitting them promptly, you should advse the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation (OPIC), 1615 M Street, MW, Washington, DC 20527. Telephone: (202) 457–7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–7231.

Summary of Form Under Review

Type of Request: Extension of expiration date without substantive change.

Title: OPIC Opportunity Bank Project Profile.

Form Number: OPIC–83.

Frequency of Use: Once per project proposal.

Type of Respondent: Businesses or other for-profit.

Standard Industrial Classification: All.

Description of Affected Public: Foreign Businesses.

Number of Responses: 300.

Reporting Hours: 15 minutes per response.

Federal Cost: $1,798.50.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): Information will be used to provide foreign project leads to U.S. business seeking joint ventures abroad. Information will be submitted by foreign business executives who wish to attract U.S. investment.

Dated: February 20, 1986.

Robert O'Sullivan,

Office of the General Counsel.

[FR Doc. 86–4736 Filed 3–4–86; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for Review.

Purpose of Information Collection

The proposed information collection is to enable the Commission to determine eligibility of the applicant Small Businesses for Trade Remedy Assistance under section 221 of the Trade and Tariff Act of 1984, (19 U.S.C. 1339).

Summary of Proposals

(1) Number of Forms Submitted: One.

(2) Title of Form: Application for Technical Assistance from the Trade Remedy Assistance Center of the U.S.

International Trade Commission: Certification of Applicant.

(3) Type of Request: New.

(4) Frequency of Use: Nonrecurring.

(5) Description of Respondents: Small businesses requesting eligibility for Trade Remedy Assistance from the Commission.

(6) Estimated Number of Respondents: One per application for assistance.

(7) Estimated Total Number of Hours to Complete Form: One.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from the Trade Remedy Assistance Center (telephone number (202) 523–0488). Comments about the form should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on the form but find that the time required to prepare comments will prevent you from submitting comments promptly, you should so advise the Office of Management and Budget as soon as possible. A copy of the comments submitted should be provided to Jeffrey L. Gertler, United States International Trade Commission, 701 E. Street, NW., Washington, DC 20436.

Issued: February 28, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–4779 Filed 3–4–86 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–184

Import Investigation; Certain Foam Earplugs; Commission Decision To Modify That Portion of Initial Determination Limiting Duration of Confidential Treatment to Five Years

AGENCY: International Trade Commission.

ACTION: Modification of that portion of the initial determination (ID) on violation of section 337 issued by the presiding administrative law judge (ALJ) on November 30, 1984, that limits confidential treatment to five years.

SUMMARY: The Commission has determined to modify that portion of the ALJ's ID of November 30, 1984, which limits the duration of the protective order to five (5) years. The modification will permit continued confidential treatment for certain specified information beyond the five year period. The ID became the Commission's determination on January 17, 1985 (50 FR 4277).

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0079.

SUPPLEMENTARY INFORMATION: On March 15, 1985, complainant filed a motion (Motion No. 184–14C) to modify the ID to provide continuing protection for certain information now covered by the protective order issued in this investigation. The ID limits the duration of the protective order to five years from the date the Commission terminated the investigation (March 4, 1985), i.e., until March 4, 1990. The Commission has determined to modify the 5-year limitation to allow continuing *in camera* treatment of certain specified confidential information beyond the 5-year period.

Copies of the Commission's Action and Order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 27, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–4782 Filed 3–4–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–263 (Final)]

Import Investigation; Iron Construction Castings From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured [2] [3] by reason of imports from Canada of "heavy" iron construction castings and that an industry in the United States is threatened with material injury [4] by reason of imports from Canada of "light" iron construction castings, provided for in item 657.09 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5] The Commission further finds that it would not have found material injury but for the liquidation of entries of "light" iron construction castings.

Background

The Commission instituted this investigation effective October 28, 1985, following a preliminary determination by the Department of Commerce that imports of iron construction castings from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 15, 1985 (50 FR 47287). The hearing was held in Washington, DC, on January 16, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 19, 1986. The views of the Commission are contained in USITC Publication 1811 (February 1986), entitled "Iron Construction Castings from Canada: Determination of the Commission in Investigation No. 731–TA–263 (Final) Under the Tariff Act of 1930, Together

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[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR § 207.2(i)).

[2] Vice Chairman Liebeler dissenting with respect to "heavy" iron construction castings.

[3] Commissioner Brunsdale finds threat of material injury with respect to both "heavy" and "light" iron construction castings. She further determines that she would not have found material injury but for the suspension of liquidation of entries of "heavy" and "light" iron construction castings.

[4] Commissioner Lodwick found that a domestic industry was materially injured by reason of imports of "light" construction castings.

[5] In the notice of its final LTFV determination with respect to imports from Canada, Commerce stated that it believes that light and heavy construction castings should be considered within the same "class or kind" of merchandise. Therefore, it did not differentiate between heavy and light castings in making its LEFV determinations, stating that "We have therefore determined that light and heavy construction castings are of the same class or kind, and that any differences between the two types of castings are not significant enough to warrant the application of separate margins" (51 FR 2412).

With the Information Obtained in the Investigation."

Issued: February 19, 1986.

By Order of The Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 86-4781 Filed 3-4-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-10 (Sub-37X)]

Norfolk and Western Railway Co.; Discontinuance of Service; Exemption in Suffolk, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of service by Norfolk and Western Railway Company over approximately 4.9 miles of rail line in Suffolk, VA, subject to employee protective conditions.

DATES: This exemption will be effective on April 4, 1986. Petitions to stay must be filed by March 20, 1986, petitions for reconsideration must be filed by March 31, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-10 (Sub-No. 37X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Angelica D. Lloyd, 204 South Jefferson Street, Roanoke, VA 24042-0069

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: February 26, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-4882 Filed 3-4-86; 8:45 am]

BILLING CODE 7035-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (Program) including certain measures contained in section 404 of the Program to improve downstream passage of juvenile fish at U.S. Army Corps of Engineers dams on the lower Columbia and Snake River. On October 10, 1984, the Council amended section 404 of the Program. In response to concerns expressed by agency and tribal fishery managers on the Columbia River in early 1985, the Council invited the fishery managers on August 2, 1985 to submit a written proposal for an alternative to the Program's existing downstream passage measures. On August 8, 1985 the Council chartered the Mainstem Passage Advisory Committee (MPAC), comprised of representatives of the fishery managers, the Corps, Bonneville, and the Pacific Northwest Utilities Conference Committee (PNUCC). The MPAC meet on eight times between August, 1985 and January, 1986. Its members developed or directed much of the analysis upon which the Council's action is based. All committee meetings were open to the public. In a public meeting on December 12, 1985, the Council voted to initiate rulemaking to amend sections 304, 404 and 1504 of the Program, pursuant to section 4(d)(1) of the Northwest Power Act and section 1404(a)(1) of the Program. A notice of proposed amendment, public hearings, and opportunity to comment was published in the **Federal Register** (50 FR 52575) on December 24, 1985. A copy of the notice, together with an issue paper discussing the proposed amendment, its background, and alternatives to it, were mailed to the Council's fish and wildlife consultation list, comprised of representatives of Indian tribes, federal and state fish agencies, federal power agencies, and sustimers of the Bonneville Power Administration. The notice established a 43-day public comment period, extending from December 12, 1985 to January 24, 1986. On January 9, 1986, the Council published in the **Federal Register** (51 FR 1053) and mailed to its fish and wildlife consultation list, a notice announcing hearings and correcting certain cost figures. Hearings on the proposed amendments were held and public comment was received on January 13, 1986 in Helena, Montana, on January 17, 1986 in Boise, Idaho, on January 21, 1986 in Spokane, Washington and on January 22, 1986 in Portland, Oregon. Consultations with leaders of the fishery agencies, tribes, utilities, the Bonneville Power Administration and the U.S. Army Corps of Engineers were held in January 1986. During the comment period, the Council staff also continued to share information and undertake further technical analysis in cooperation with interested parties. Written comment was received from 35 individuals and organizations, and oral comments were heard from at least 10 individuals and organizations. The public comment period closed at 5:00 p.m. on January 24, 1986.

Final Amendments

The Council has considered fully the issues and the public comment in this rulemaking, and has evaluated the proposed alternatives under the standards for Program measures stated in section 4(h) of the Northwest Power Act. The Council hereby amends the Columbia River Basin Fish and Wildlife Program as follows:

1. In section 304, paragraphs (b)(2) and (d)(1) are revised to read as follows:

* * * * *

(b) * * *

(1) * * *

(2) The Water Budget managers will be the primary points of contact between the power system and the fish and wildlife agencies and tribes on matters concerning the Water Budget and spill at hydroelectric projects operated by the Corps of Engineers on the mainstem of the Columbia and Snake Rivers. They will be responsible for informing the Corps of Engineers when and to what extent they wish to draw on the Water Budget. They also will be responsible for all in-season communicatons regarding spill. The Corps will inform the other project operators and regulators of Water Budget requests and spill communications to the extent necessary. the Corps shall manage and implement annual fish passage plans, and make in-season spill decisions and adjustments

in consultation with the Water Budget managers.

* * * * *

(d) * * *

(1) Bonneville shall fund a study to gather additional evidence on the relationship among flows, spills, travel time, and smolt survival. This study will include an analysis of the relationship between flows and survival of the late-summer migrating chinook stocks, which migrate during earlier life stages than the smolts that migrate in the spring. Based on the results of the study, the Council will determine whether the Water Budget is successful in achieving smolt survival and to what degree. Annually, it will review the operation of the Water Budget. Pursuant to section 1400, the Council will consider proposed alternatives to the Water Budget designed to be more effective in improving downstream migration or in reducing power system effects. Bonneville shall also fund expeditiously investigations of spill effectiveness, hourly fish passage patterns, and reservoir mortality, at mainstem federal projects in consultation with all interested parties.

* * * * *

2. In section 403, the final paragraph is revised to read as follows:

* * * * *

In 1986 the Council considered a number of alternatives to the 90 percent survival standard. To provide greater protection for upriver natural and wild runs, the Council extended the spill season to cover all but the first and last 10 percent of the fish migrating during the spring and summer migration periods. The Council determined that spill should be provided regardless of any impacts on firm hydropower, but in no event after August 15th of the year. The Council expects to reexamine these standards before the beginning of the 1987 migration.

3. In section 404, paragraphs (b)(3), (b)(4)(A), (b)(8)(A) and (b)(9)(A) are revised to read as follows:

* * * * *

(b)* * *

(1)* * *

(2)* * *

(3) In consultation with the fish and wildlife agencies and tribes, the Corps of Engineers shall develop and implement a plan for spills which will achieve a level of smolt survival comparable to or better than that achievable by the best available bypass and screening systems, and at last 90 percent smolt survival. This shall be done by April 1 of each year. Spill operations shall begin when the first 10 percent of the spring migrants have passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the projects consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plan that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, and make in-season spill decisions or adjustments in consultation with the Water Budget managers.

(4) The Corps of Engineers, having studied bypass efficiency of the sluiceway at The Dalles Dam and reported to the Council on study results, shall implement:

(A) A coordinated interim juvenile passage plan which will result in at least 90 percent smolt survival of spring and summer migrants. Spill operations shall begin when the first 10 percent of the spring migration has passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plan that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

(B)* * *

(C)* * *

* * * * *

(8) The Corps of Engineers shall implement at Lower Monumental Dam:

(A) A coordinated interim juvenile passage plan which will result in at least 90 percent smolt survival of spring and summer migrants. Spill operations shall begin when the first 10 percent of the spring migration has passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plant that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

(B) * * *

(9) The Corps of Engineers, having evaluated effectiveness of the sluiceway as a fish bypass system at Ice Harbor Dam, shall implement:

(A) A coordinated interim juvenile passage plan which will result in at least 90 percent smolt survival of spring and summer migrants. Spill operations shall begin when the first 10 percent of the spring migration has passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers

of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plant that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish pasage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

* * * * *

4. Action 32.1 of section 1504 is revised to read as follows:

Bonneville Actions

32.1 Test and evaluate an alternative conduit system for juvenile fish by November 15, 1986. Report results to the Council by January 1987. [section 404(c)(3).] Fund expeditiously studies to investigate spill effectiveness, hourly fish passage patterns, and reservoir mortality, at mainstem federal projects in consultation with all interested parties. [section 304(d)(1).]

* * * * *

5. Action 32.2 of section 1504 is revised to read as follows:

Corps Actions

32.2 All projects.

• Develop and implement a coordinated systemwide annual juvenile passage plan to achieve at least 90 percent smolt survival of spring and summer migrants at each project as described in section 404(b). Include estimates of fish bypass efficiencies and smolt survival for each project and for the system. Spill operations shall begin when the first 10 percent of the spring migration has passed and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plan that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

• Continue to implement adult fish criteria and evaluate measures to protect adult passage at each project. [Section 604(a)(1), 604(a)(2), 604(a)(3), 604(b)(1), 604(b)(2).]

• Submit a draft comprehensive transportation evaluation report and proposal for further action to the Council by March 1985. Submit a final report, incorporating a review of comments, to the Council by May 1985. [Section 404(b)(17).]

• Present an annual report to the Council each January on each project's fish passage facilities, research results, and operations. Include proposals for future actions to improve fish passage facilities. [Section 404(b)(1)–(9), 604(a)(1)–(3).]

Response to Comments

1. Procedural Adequacy of Rulemaking

Comments: A number of commenters objected to what they perceived as the "fast track" nature of this rulemaking. Seattle City Light (Seattle) said, for example, that it could not get a clear picture of what the rulemaking was proposing. The Public Power Council (PPC) and Intercompany Pool (ICP) agreed, asserting that the initial proposal had been given numerous interpretations during the course of the rulemaking. The Pacific Nowthwest Utilities Conference Committee (PNUCC) said that the Council had failed to make its proposal clear in time to allow for the study and analysis that it required.

Puget Power, Bonneville, PNUCC, Pacific Power & Light and others asserted that there was no justification for altering the current spill criteria. The existing Program has measures to improve survival, PNUCC said, the Corps' 1985 spill practice surpassed the Council's standard and no targeted species are declining in population. Bonneville asserted that despite low water conditions in 1985, all runs of upriver fish except mid-Columbia summer chinook showed substantial increases over returns in the 1970s. In other words, there was no evidence produced to suggest that fish survival in 1985 was inadequate. Seattle agreed that no emergency had been demonstrated that would warrant a "fast track" proceeding. In the absence of any threat of extinction, any showing of irreparable damage, or even any substantial loss, ICP said, this subject ought to have been taken up in the Council's regular 1986 amendment process. ICP said that neither of the Council's two stated premises for amending the Program justified what ICP characterized as "emergency action." Neither the lack of agreement between the fish agencies and tribes and the Corps nor the fact that the existing standard was generally being met by the Corps was reason for amending, in ICP's opinion.

PNUCC, ICP, PPC and others stated that they had not had time to evaluate adequately the complex issues entailed in establishing spill levels. Moreover, throughout the public comment period, the data and assumptions being evaluated were characterized by substantial uncertainty, ICP said. As late as four days before the close of public comments, Puget said, the Council staff was still running computer studies to determine the possible cost impacts of the proposed amendment. Pacific asserted that the existing regime for increasing runs of anadromous fish was achieved through the mutual effort of all those who own and operate dams on the Columbia and is based on supporting evidence. Amending this regime in a "fast track" proceeding could be harmful to the region, Pacific said.

Puget said that the "fast track" amendment process fails to meet the statutory standards mandated by the Northwest Power Act and the Program. Puget argued that this amendment is not based on "research results, changing technology, legal developments, efforts to coordinate the Council's program with programs aimed at non-hydroelectric effects on fish and wildlife, and other significant developments," citing only a portion of section 1401. Because data was being subjected to ongoing analysis throughout the public comment period, Puget asserted that the amendment was not based on "conclusive evidence," as the Program allegedly required. PNUCC said that although it worked with the Council's staff in developing a shared data base that would support accurate comparisons of costs and benefits, such comparisons were not produced before the close of public comment. "In fact, analysis continued after public testimony at the January 22 hearing and after a consultation of the parties that same day," PNUCC said.

Bonneville criticized what it viewed as a "piece-meal" approach to improving passage and urged a "programmatic passage strategy" based on sound biological objectives such as river system fish stock survival rates

and annual passage plans. Bonneville argued that focusing on the survival level at each project is both inconsistent with the systemwide planning mandate of the Northwest Power Act and does not constitute a sound biological objective. BPA said that any strategy ought to account for transportation and reservoir mortalities. Bonneville agreed with those who said this subject ought to be taken up in the 1986 amendment process, but should the Council decide to amend the spill criteria in this proceeding, Bonneville offered a recommended strategy addressing the concerns it raised.

The National Wildlife Federation (NWF) described the agencies' and tribes' proposal as a "recommendation," which must be approved if the statutory criteria are met.

Response: The rulemakings undertaken by the Northwest Power Planning Council are governed by the Northwest Power Act and section 553 of the federal Administrative Procedure Act (APA). Under neither of these statutes can this Mainstem Passage amendment process be considered "fast track." The process leading to the Council's action was an intense one, providing numerous opportunities for public comment and focusing more effort by more people than any other single proposal for action in the history of the Program. The Council held hearings in each of the region's four states, as the Northwest Power Act requires. Interested persons were given the opportunity to submit oral testimony, both at the hearings and at several consultations sponsored by the Council, and were all allowed to submit written comments throughout the 43-day comment period. Neither statute prescribes a particular amount of time that must be permitted for public comment in "notice and comment" rulemaking. The Council has concluded that it allowed a reasonable amount of time for public review and comment. In this case, the Council voted to enter rulemaking on December 12, 1985, and notice of the proposed rule was published in the **Federal Register** on December 24, 1985, and mailed to the Council's fish and wildlife consultation list. The public comment period closed on January 24, 1986. The Council set the length of the comment period with the proximity of the 1986 downstream migration of juvenile salmon and steelhead in mind, realizing that if any improvements in the survival objectives were to benefit this year's run, the rulemaking would have to be concluded with enough time for the Corps and Bonneville to implement any amendments. The Council was also aware that considerable discussion, study, analysis and sharing of views regarding the need for amending existing spill objectives had been going on among interested persons for at least nine months preceding the notice of proposed rulemaking. Nor was mainstem passage a new subject for the region. Interested members of the region had addressed the question of spill objectives several times before this rulemaking. The Council's 1982 Program called upon the Corps of Engineers to develop a spill program in consultation with the fish agencies and tribes and extensive discussions ensued. The Council took up this question again in 1984, when it set the 90 percent survival level under review in the current rulemaking. The fishery agencies and tribes were actively discussing this question with the Corps in early 1985, and at the Council's March 1985 meeting, the fishery agencies and tribes asked the Council to reconsider the 90 percent objective. The Council called for alternative proposals and on August 8, 1985, the Council chartered the Mainstem Passage Advisory Committee (MPAC). MPAC held at least eight meetings to discuss mainstem passage and spill objectives prior to the close of this rulemaking. All MPAC meetings were open to the public. The Council has concluded that this subject has received sufficient analysis, over an extended period of time, to justify its decision. In light of the extended period of intense discussion, the Council disagrees with those who characterize its consideration of spill objectives as "fast track."

The Council provided adequate notice of the proposed amendment to interested persons. The December 24, 1985 **Federal Register** notice (50 FR 52575) set forth clearly the questions the Council intended to address in the rulemaking: (1) What survival objectives would provide adequate interim protection for juvenile fish? (2) Is a survival objective appropriate for transported fish? (3) Who should have the responsibility of coordinating spill requests? In proposing its answers to these questions, the Council made clear the direction of its own thinking. For example, the proposal set an interim survival level of 94 percent in average and higher water conditions and a 92 percent objective in lower-than-average water conditions. The notice also invited public comment on a number of specific questions aimed at focusing the direction and scope of the issues involved. To narrow the issues, the notice also limited preliminarily: (1) The merits of transportation, (2) the problem of reservoir mortalities, and (3) the management and institutional issues raised by the fishery agencies and tribes.

In addition to the original **Federal Register** notice and a supplemental **Federal Register** notice that corrected some data, the Council also distributed to interested persons an issue paper, "Alternative Interim Fish Passage Objectives," which gave an even more detailed account of the issues and the proposed rule. Members of the Mainstem Passage Advisory Committee, including a representative of PNUCC, participated directly with the staff during the five months of the ongoing development of the issues surrounding spill objectives; MPAC members were intimately familiar with both what was at issue in this rulemaking and with the continuous analysis of the data that had been gathered.

The Council is also aware that those entitles that stand to be most directly affected by this rulemaking have been represented in the process from its inception, and, in most cases, for the past several years. The Northwest Power Act does not require the Council to act on the basis of perfect knowledge, nor is the standard "conclusive evidence," as Puget asserted. Instead, the Council's action is to be based on and supported by "the best available scientific knowledge." Northwest Power Act, section 4(h)(6)(B). The Council has concluded that through the contributions of its staff and of various other interested persons, it employed the best scientific knowledge that is currently available. All of the alternatives examined during this rulemaking were based on the same body of data with the same analytical models and the same assumptions. That data was developed by the Council staff with the assistance of the MPAC, which worked in public meetings. MPAC's membership includes many of the scientific and technical experts on mainsteam passage issues. The Council judged that each of the alternatives was based on the best available scientific knowledge, since each was modeled using the Corps' FISHPASS survival model. This model incorporates the best available mainstem passage coefficients and assumptions developed in the MPAC. By holding the model coefficients constant and varying only spill or survival levels, it was possible to make a relative comparison of each of the alternatives. In this manner a common set of studies was developed for use by all interested parties.

The Council notes, in response to PNUCC's concern that analysis was still being done late in the comment period, that no new data was added once the comment period closed. Of course further analysis of the data was being done, as is appropriate under the APA and necessary in this sort of rulemaking.

In response to the comment of ICP that the Council failed to judge that either the existing standard or the Corps 1985 spill program was less than adequate, the Council notes that the amendment specifies that spill is to be provided to protect 80 percent of the spring and summer migrants in both the Snake and Columbia rivers. Current Program measures do not specify the duration of spill protection, and the Corps has provided spill only to the extent that nonfirm energy is available. The amendment makes the fishery agencies and tribes responsible for establishing the biological criteria for determining the average of typical migration times and fish numbers that will trigger spill to protect the middle 80 percent of the spring chinook and steelhead in the spring period and the middle 80 percent of the subyearling chinook in the summer at the noncollector dams, regardless of the unavailability of nonfirm energy. The amendment also emphasizes the need for further evaluation of spill effectiveness and other mainstem survival questions.

The Council does not regard the fishery agencies' and tribes' proposal as a recommendation that triggers all the procedural requirements of the Northwest Power Act. See, for example, section 4(h)(7). As noted in the original **Federal Register** notice, this rulemaking was undertaken pursuant to section 4(d)(1) of the Northwest Power Act and section 1404(a)(1) of the Program. Section 1404(a)(1) provides that the Council may consider a program amendment at any time on its own motion and that it may adopt a recommended amendment, adopt it with modifications, or reject it "for failure to conform to the statutory standards for program elements." These statutory standards for program elements are found in sections 4(h)(5) and (6) of the Northwest Power Act. Measures must "protect, mitigate, and enhance fish and wildlife affected by the [hydroelectric facilities on the Columbia River and its tributaries] while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation." Northwest Power Act, section 4(h)(5). Such measures must also "complement the existing and future activities of the Federal and region's state fish and wildlife agencies and appropriate Indian tribes; be based on, and supported by, the best available scientific knowledge; utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost; be consistent with the legal rights of appropriate Indian tribes in the region; and in the case of anadromous fish, provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives." Northwest Power Act, section 4(h)(6). These are the criteria that the Council applied in evaluating the fishery agencies' and tribes' proposal.

In response to Bonneville's comment that this rulemaking constitutes a "piece-meal" approach to improving passage, the Council notes that no single measure can be expected to produce dramatic systemwide results in improving the production, migration and survival of fish in the Columbia Basin. While the Council agrees with Bonneville that the thrust of the Council's energies and the Program as a whole must be to achieve a systemwide plan, that does not mean that the Council is contrained to take up the entire Program every time it acts. Sections 4(d)(1) and 4(h) of the Northwest Power Act anticipate that the Program may be amended from time to time apart from the Program-wide amendment process. As summarized in the preceding paragraph, the Act also establishes the criteria the Council is to apply in evaluating particular amendment proposals, and those are the criteria the Council employed in this instance.

2. Biological Benefits

Comments: The United States Fish and Wildlife Service (F&W) stated that the Snake River runs of salmon and steelhead, especially the wild or naturally produced runs, "need all the assistance possible to facilitate their outmigration." F&W asserted that even small increases in per dam survival will produce significant benefits to overall outmigration survival.

The National Wildlife Federation (NWF) contended that the current standard does not satisfy the statute's requirement of improved survival. NWF particularly emphasized the importance of summer spill to protect the Snake River runs, which are among the most threatened on the system. Upriver salmon and steelhead might even qualify as endangered species, NWF said. NWF asserted that no standard less than 94 percent could be justified under the Act, and "surely no lower standard will restore the threatened Snake River fish run." NWF, Oregon Department of Fish and Wildlife (ODFW), and CRITFC argued that there is no biological justification for differentiating between high and low water years.

Regarding the scale of biological benefits, which the National Marine Fisheries Service (NMFS) concedes is much smaller than expected, NMFS urged the Council not to use high reservoir mortalities as a reason for not improving dam survival. NMFS asserted that there is insufficient knowledge of reservoir and dam mortalities to be confident about the reservoir mortality assumption. In the short-term, NMFS said there are no viable alternatives for improving survival, since transportation is already at its maximum and bypass system improvements will take several years to complete.

CRITFC also urged protection of summer migrants and objected to the Corps' method of estimating system mortality as one that was not endorsed by the Mainstem Passage Advisory Committee. The Corps' method, CRITFC and ODFW said, ignores the fact that 25 percent of the fish modeled were input in the Bonneville pool. Thus the Corps' aggregated numbers ignore disproportionate mortalities upstream. ODFW and CRITFC also objected to the Corps' accounting for transportation, allowing equal credit to transported and inriver fish. CRITFC emphasized tribal fishing rights, noting that in the last decade mainstem treaty fisheries have been severely restricted.

The Corps, on the other hand, criticized the dam survival standard as inadequate because it ignores reservoir passage, transportation and the condition of individual stocks. The Corps also said that dam survival criteria are complicated by the survival coefficients and diel (hourly fish passage patterns) and seasonal fish distributions used to compute them. The Corps asserted that in addition to the 90 percent protection offered by the Program, at least an additional 5 percent is provided by the bypass systems. The Corps said it regards the 90 percent standard as a minimum; in practice the Corps has done better. The Corps criticized the staff's December 1985 92/94 proposal because it was "not

accompanied by supporting data showing the incremental benefit in overall survival improvement versus cost." The Corps contended that its evaluation of various passage plans for 1986 demonstrated that current spill levels represent a reasonable upper limit. The Corps also asserted that improved inriver survival may not result in improved adult runs due to problems with fish health, hatchery practices and ocean harvest management. Until those problems are corrected, dam improvements will do little, the Corps stated.

The Corps also argued that it is improper to use only eight-dam survival as a primary measure of total system survival when more than 83 percent of the migration passes six dams of fewer and 24 percent enters Bonneville pool alone. No fish enter the Ice Harbor pool and the Lyons Ferry hatchery releases in the Lower Monumental pool have transportation facilities available. Therefore, it is incorrect to argue that inriver fish entering below Little Goose suffer an inordinate mortality level.

The Corps also urged the Council to adopt a study plan to develop system survival criteria during the regular amendment process.

Bonneville suggested that the Council use a "System Stock Survival Method" that measures survival of individual stocks throughout the system. ODFW and CRITFC agreed that such a method could be useful, but only if applied to in-river migrants with no downstream fish inputs, and not to transported fish.

Puget said that it continues to support the bypass solution at both federal and non-federal projects, but until such facilities are in place, Puget believes that the 90 percent survival objective is both reasonable and adequate. Unless research and testing clearly support the cost-effectiveness of increasing that level, it should not be changed, Puget asserted. Puget agreed with PNUCC that summer spill studies demonstrate poor results: only summer chinook would benefit from summer spill and more spill will not measurably increase the number of returning adults. Nor will more spill allow for the inriver harvest of summer chinook, Puget said. PPC echoed these views.

PNUCC contended that none of the proposed amendments offered significant biological improvements over the existing program. PNUCC said that no stocks or runs that are in danger of extinction stand to benefit from the proposed amendment. In its analysis, PNUCC focused on the zero-aged summer chinook as the stock with the greatest potential impact on the power system and the stock in which the fish agencies are most interested. PNUCC also submitted the comments of Dr. Don Chapman analyzing spill benefits to summer chinook, which concluded that transportation is the best means for improving protection.

Finally, PNUCC said, the summer migrants run well beyond the period suggested by the Council staff proposal and beyond that convered by the FISHPASS analysis, with the results that the proposal offers summer and fall chinook little protection and the enormous costs of spilling later in the summer are not reflected in the cost analyses.

Response: The Council agrees that upriver runs, particularly wild and natural runs and those originating in the Snake River system, merit additional protection, and for that reason has decided to insure that the spill program protects summer migrants. On the other hand, the Council disagrees with the suggestion that no survival standard less than 94 percent can provide adequate protection for upriver runs. Information developed through the MPAC does not demonstrate a significant biological benefit from increasing the survivial standard from 90 percent.

The Council concludes that the existing 90 percent standard, including spill to protect summer migrants, provides sufficient interim protection to be consistent with the Northwest Power Act's requirement that measures be developed to improve survival at mainstem dams. The Council also concludes that there is no significant biological difference between the Council's amendment and the fishery agencies' and tribes' proposal, because both would extend spill into the summer migration season. The Council's amendment was adopted because it is the less costly of the alternatives providing summer spill.

The Council concurs with NMFS that the reason for the relatively small incremental biological benefit due to improvements in dam survival or spill is because the high reservoir motality included in the FISH PASS model dampens the benefits gained by increasing smolt survival at the dams. The Council also agrees with Bonneville that the System Stock Survival Method is a promising analytical tool, and has analyzed both "system survival" and "stock survival" methods in this rulemaking. The Council also agrees with CRITFC an ODFW that this method should be applied to in-river migrants only, given the sharp dispute among the experts regarding the ultimate benefits of transportation. (See "Transportation" section, below.)

Regarding the Corps' criticism that the dam survival standard is inadequate because it ignores reservoir passage, transportation and the condition of individual stocks, the Council's analysis of all the alternatives included full consideration or reservoir mortality and maximum smolt transportation. The Council's calculations of downstream (system) fish survival are based on the best biological information available on fish mortality in the reservoirs, over the spillways, through the turbines and bypasses and during collection and transportation. The model also includes the best available diel and seasonal fish distribution data developed in the MPAC process. All of these data coefficients and assumptions were held constant in each of the FISH PASS studies to allow for a comparison of alternatives.

In addition, the Council has not evaluated the alternatives on the basis of dam survival alone. Rather, the Council has evaluated the alternatives on the basis of three biological factors: (1) Whether the proposals increase the number of fish that survive through the system as a whole ("system survival"); (2) whether the proposals improve survival rates at specific dams ("dam survival"), in accord with the Program action plan's call for improvements in survival at mainstem dams (Program section 1503, Goal 1, p. 109); and (3) whether the proposals protect wild and natural runs, which are located primarily in upriver areas ("stock survival"), and which have a special status under the Fish and Wildlife Progam (Progam section 700, p. 43).

The Council recognizes that many fish pass only six dams, and that 24 percent enter the system in the Bonneville pool. The Council has taken these facts into account, while also considering that most of the fish entering at the Bonneville pool are hatchery fish, that the wild and natural stocks enter the system upriver from Bonneville Dam, and that the weakest stocks in the system enter in the uppermost reaches of the system, particularly in Idaho.

Regarding the Corps' comment that in addition to the 90 percent survival level, at least an additional five percent protection is provided to fish through bypass systems, the Council notes that the amendment will provide interim protection of juvenile fish at four mainstem projects: Lower Monumental, Ice Harbor, The Dalles, and John Day. Of these projects, only John Day Dam has a bypass system (partially completed) to provide some protection for juvenile fish. Both The Dalles and Ice Harbor have sluiceways to provide

some protection. Lower Monumental Dam, however, has neither a screening and bypass system nor a sluiceway to protect fish. The Council's amendment calls for the most spill at Lower Monumental Dam, with lesser amounts at John Day, the Dalles and Ice Harbor dams, reflecting their varying levels of smolt protection. Problems with fish health and hatchery practices are being addressed by ongoing research programs and ocean harvest management issues are largely being addressed by the U.S./Canada Pacific Salmon Treaty. Contrary to the Corps' contention that there are few inriver fish remaining in the river below Little Goose Dam, FISHPASS model studies, including maximum transportation of all smolts, indicate that nearly 1.8 million fish either enter or remain inriver to pass Lower Monumental and Ice Harbor dams. These inriver fish, which represent over 30 percent of the cumulative total of fish transported in the Snake River, will require interim protection in the form of spills.

The Council agrees with the Corps that there is a need to broaden the context of review of the role of spill and mainstem passage. The Council intends to do so during the balance of this year, and will consider carefully the merits of the system stock survival method.

Regarding PNUCC's concern over the length of the summer spill period, the Council's analysis used the seasonal fish migration data developed in the MPAC process, which specified median dates of June 8 through the end of July to protect 80 percent of the summer migration at McNary Dam. The Council has determined that spill should not be required after August 15 of each year.

3. Cost-Benefit Analysis

Comments: The Direct Service Industries, Inc. (DSIs) asserted that a cost-benefit analysis is the proper standard to use in evaluating alternative approaches for enhancing fish survival. The DSIs said that the Council's proposal would offer no increased benefit over the existing Corps practice but would have a significantly increased cost. NWF, CRITFC and ODFW rejected a cost-benefit analysis and the Corps of Engineers asserted that system survival benefits and foregone power revenues should be the criteria for judging proposals.

Response: The Council agrees that traditional cost-benefit analysis is inappropriate under the Northwest Power Act. The Council has not evaluated any of the alternatives according to a cost-benefit criterion. Rather, the Council has determined whether (1) the alternatives "protect, mitigate and enhance fish" affected by the development and operation of Corps projects, "while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply." Northwest Power Act, section 4(h)(5); and (2) "where equally effective alternative means of achieving the same sound biological objective exist," the Council has chosen "the alternative with the minimum economic cost." Id., section 4(h)(6)(C).

4. Impact on Power System

Comments: NWF asserted that the fish agency and tribes' proposal does not undermine the power system, and that impacts on nonfirm power represent lost dollars, not an unreasonable power impact. The DSIs said that the Council's proposed amendment would probably degrade the quality of service to their loads, increase power costs, and have no proportionate benefits to fish survival. The DSIs asserted that the proposal might adversely affect their top quartile service in a number of ways, chiefly in below average water years. The DSIs also observed that power restrictions would probably have long term adverse effects on the region in terms of loss of BPA revenues, DSI plant production, jobs, state and local tax revenues and associated economic impacts. The DSIs asserted that the Council's analytical models do not capture these effects, with the result that estimates of the effects of top quartile restrictions likely understate the impacts on Bonneville's revenues and other costs to the region.

Response: There is no evidence on the Council's analysis that any of the spill proposals would reduce the reliability of the power system. The Council has concluded that the spill program encompassed by this amendment does not represent a threat to a reliable, economic power system. Moreover, in none of the Council's analyses was the top quartile load affected in any way. Service to the top quartile was unchanged between base case and all spill cases in all periods of the year. The only possible effect to the top quartile would occur if the system did not refill by the end of July because of the spill proposal. In that case service to the top quartile might be affected in the next year although there is sufficient water available to refill reservoirs if the system operators wish. Based on the Council's analysis, however, the effect on refill was negligible. DSI firm loads were not affected in the Council's analysis. Provisional draft was returned with no curtailment to the DSI firm quartile.

5. Transportation

Comments: The Corps argued that the transportation question should be addressed, consistent with section 4(h)(6)(C) of the Northwest Power Act, and that the data for evaluating transport is more complete than for evaluating survival goals. The Corps also contends that transportation of all species is desirable.

CRITFC argued that transported fish return in relatively poor numbers,and that system survival calculations are extremely sensitive to changes in post-transport survival.

PNUCC submitted a statement proposing transportation of as many summer migrants as possible to avoid an extended period of spill running into the fall and early winter and called for increased study of transportation alternatives of certain fall chinook stocks and supplemention of certain summer chinook stocks.

Bonneville also urged maximum transport of all stocks, with careful monitoring to insure that rebuilding is taking place.

Response: The Program amendment specifies the level of protection to be afforded fish that are not transported, and does not say whether more or fewer fish should be transported. The Council agrees that the post-transport factor may be a sensitive variable, but does not believe that sufficient knowledge exists to choose any particular factor. As the comments illustrate, experts differ sharply about what is the "best available scientific knowledge" on the merits of transportation, and the Council has not attempted to resolve that continuing debate in this interim rulemaking.

Regarding research, the Program already calls for studies of tansportation effectiveness (sections 404(b)(17); and 404(a)(4)).

6. Costs.

Comments: CRITFC and ODFW emphasized the uncertainty of the cost numbers analyzed in the rulemaking, but CRITFC accepted generally the Council's and Bonneville's cost estimates. CRITFC and ODFW suggested that the total cost of the fishery agency and tribal proposal may be lower than models show, because maximum transportation may be used in 1986; in better water years, spill costs would decrease dramatically, ODFW and CRITFC also noted that the cost of their proposal would be a small part of Bonneville's revenues in all events, and suggested that the cost of their proposal

would be lower if they were allowed to manage the spill program.

The Corps noted that increased spill would be very costly, and especially if the Council allow impacts on FELCC, or calls for summer spill. The Corps accepted BPA's cost data, recognizing that they "also have limitations."

ICP expressed confusion about the cost of the Council's proposal contained in the Federal Register notice, referred to a $100 million cost estimate, and suggested that the cost would be much higher than the Council expected. Puget challenged the cost estimates included in the Council's Federal Register notice.

Seattle City Light (Seattle) said it was unsure of the cost or impacts of the proposal outlined in the Federal Register notice, but did conclude that the cost would be very high and the benefits very small. Seattle asserted that the cost and power impacts might violate the Northwest Power Act, section 4(h)((1)(B), if the proposal required more interchange energy to be delivered to other Pacific Northwest Coordination Agreement Parties from the Skagit plants. Seattle said its costs could be as great as $10 million annually.

ICP also noted that the impact of the spill outlined in the Federal Register notice would fall largely outside the water budget period, when its power impacts are likely to be the greatest, yet most difficult to translate into monthly average spill. If BPA has to spill at Grand Coulee in order to meet a higher spill requirement, ICP said, the downstream non-federal project might find themselves with unshapable surplusses. ICP also stated that the benefit of spill would cost approximately $1,000 per returning adult fish.

PNUCC said that it hadn't had time to analyze thoroughly the cost impacts of the various proposals, but was skeptical of the results generated by the System Analysis Model (SAM). PNUCC also challenged: (1) The Council's limiting consideration of costs to expected values; (2) the Council's failure to use a base case in the analysis that reflects no forced spill; and (3) the Council's failure to account for a true "worst case" low-water scenario.

The DSIs did not see that the Council's proposal offered any biological improvement over the Corps' in terms of fish mortality, despite high costs. The DSIs asserted that a cost-benefit analysis ought to be applied to evaluate alternative approaches to enhancing fish survival, just as it would be for any project. The DSIs also alleged that Council's proposal would fail to ensure an economic and reliable power supply for the region and would not constitute a reasonable balance between fish and power.

Response: The Council agrees that the cost data generated by the model is inexact, and precludes any precise prediction of the costs of any of the alternative proposals. The Council has used the model results only to make comparisons among alternatives.

The Council has not evaluated any of the alternatives according to a cost-benefit criterion. See "Cost-benefit analysis" section, above.

Regarding the cost of the agency and tribal proposal, the Council agrees that eliminating spill at Lower Granite and Little Goose could reduce the total cost of the proposal. The Council's latest analysis assumes maximum transportation for the proposal, with no spill at Lower Granite and Little Goose.

Regarding refill impacts, the Council's analysis, which looked at the expected value forecast for this year's runoff as the worst case of three, showed no refill impacts.

The Council agrees that summer spills would increase the cost of the spill program.

Regarding the cost of the spill program in 1985, the Council was unable to verify Bonneville cost calculations because neither Bonneville nor any other commenter submitted detailed information regarding those calculations. The Council has approached comparisons with the 1985 spill program cautiously, since 1985 was a peculiar year: The runoff forecast was consistently higher than the actual runoff. This scenario should represent the worst case (highest cost) for spill planning. Throughout 1985, operators planned on having more water than was actually available; they were thus not as cautious and as a result the hydro system did not refill. This scenario is unlikely to reoccur, although it probably does represent one kind of worst case for the current volume forecast, which is very similar to the 1942 water condition used in the analysis.

Regarding Seattle's concerns, the Council's analysis showed that hydro system refill would not be affected. Seattle has not provided the Council with sufficient information regarding the possible impact to Seattle due to interchange requirements to determine whether such impacts realistically can be expected. The Council concludes that this amendment would not violate section 4(h)(1)(B) of the Northwest Power Act. Utilities that share in the benefits of the Federal Columbia River Power System under the Coordination Agreement have agreed to share in the costs of generating power on the river. These costs include the cost of protecting, mitigating and enhancing fish and wildlife affected by the hydroelectric system.

Regarding ICP's confusion over cost estimates, the Council is not aware of the source of any $100 million estimate. The fact that BPA's actual cost of spill in 1985 was approximately twice its original estimate is probably a function of the unusual forecast-to-runoff relationship last year. It is thus more likely to be evidence of the unlikely worst case than of the most likely outcome.

The Council agrees that spill after June 15th would have the greatest cost impact because less non-firm hydro power is available then, and prices could be higher if supplies are short. It is not clear why Grand Coulee would have to spill. It was not a project designated to spill in any of the proposals.

Regarding PNUCC's concerns: (1) In the Council's latest analysis, it did not use expected values over all water conditions, but rather values for specific water conditions; (2) the Council used a base case that contained no fish bypass spill; all of the spill scenarios were modeled with the current spill operation at Bonneville; (3) the $27 million total actual cost estimate for last year's spill program, which has not been supported with analysis or explained to the Council, probably represents one reasonable worst case for this year's volume runoff forecast.

Based on the Council's anlysis, there is no evidence that any of the spill proposals would reduce the reliability of the power system. The Council believes that the spill program encompassed by this amendment does not represent a threat to a reliable, economical power system.

Regarding the concerns of the DSIs, in none of the Council's analyses was the top quartile load affected in any way. Service to the top quartile was unchanged between base case and all spill cases in all periods of the year. The only possible effect on the top quartile would occur if the system did not refill at the end of July because of the spill. In that case the service to the top quartile might be affected in the next year although there is sufficient energy available to refill reservoirs if the system operators wish. Based on the Council's analysis, however, the effect on refill was negligible and DSI firm loads were not affected. Provisional draft was returned with no curtailment to the DSI firm quartile.

7. Criticism of Models

Comments: NMFS cautioned the Council not to rely too heavily on Corps

models and cost estimates due to the wide range of uncertainties involved; their use of single flow conditions; their treatment of transportation credit in a manner objected to by NMFS in the Mainstem Passage Advisory Committee; and the Corps' use of 1942 water conditions, which show higher costs than any other year the advisory committee studied, due to anomalies in runoff shape.

The U.S. Fish and Wildlife Service disputed the reliability of the modeling analyses. They argued that the model does not successfully account for all relevant factors, such as additional mortality occurring in reservoirs as a result of turbine injuries, stress and disorientation.

PNUCC said that the uncertainties contained in the FISHPASS model have not been adequately evaluated. The dam mortality calculated by FISHPASS, for example, is particularly sensitive to the turbine mortality and spill effectiveness coefficients employed, which have a significant range of uncertainty. PNUCC also stated that the FISHPASS iterative process of estimating spill introduces another significant range of error. FISHPASS results demonstrate that increased spill adds no significant protection to downstream migrants, according to PNUCC, and there is no significant difference in benefits among the various proposals. When spill is increased at collector dams, moreover, the result is that fewer fish are transported, more remain in the river to die in the reservoirs, and fewer fish survive to below Bonneville Dam. PNUCC also asserted that the small decreases in mortality shown in the various proposals are within the range of uncertainty in the FISHPASS model, so that none of the proposals can be said to represent a change from the status quo.

Response: The Council agrees with commenters who emphasize the wide range of uncertainties involved in model analyses of cost and biological impacts of the alternatives. For this reason, the Council has used model analyses only to compare alternatives, not to predict exact costs or precise biological improvements.

The Council's Mainstem Passage Advisory Committee (MPAC) selected the 1942 water year for analytical purposes. No commenter has suggested that the comparison of alternatives would differ if other water years had been used.

The MPAC also discussed whether turbine mortality assumptions should include backroll mortality and indirect losses, and determined what assumptions to use regarding turbine and reservoir mortalities. While the Council recognizes that turbine and reservoir mortalities can be debated and should be studied further, the Council concludes that the MPAC's assumptions represent the best available scientific knowledge. The amendment calls for further study of reservoir mortality, to advance the state of knowledge in this area.

Regarding the significance of biological differences indicated by the models, the Council concludes that the studies do not show significant biological benefits for increases in survival percentages greater than 90 percent. The Council has found that extending spill into the summer migration period will provide significant biological benefit.

8. Institutional and Management Issues

Comments: NMFS suggested that a failure to address institutional issues will seriously undermine the effectiveness of any interim program, and that the tribes and agencies should be given authority to manage spill. NMFS, NWF and CRITFC drew an analogy between BPA's relationship with the Corps and that being proposed by the agencies and tribes. CRITFC and NWF believe that agency and tribal management of spill will be most efficient. CRITFC opposes rigid reliance on trigger numbers of fish because it precludes flexible spill management for unpredictable patterns of fish migration. NWF supports using Fish Passage Center to manage spill.

CRITFC would not frame passage objectives solely in terms of survival, and urged the Council to define its assumptions so that implementing agencies may interpret the Program's survival objective uniformly. If the Council adopts a bare survival objective, CRITFC suggested, it should state the percentage or volume of spill to be used at each project to reach that objective.

The Corps asserted that it "has no [legal] authority to submit to binding arbitration or mediation" in providing spill, and "cannot delegate responsibility for its operation and management decisions to" the fishery agencies and tribes. The Corps, Bonneville and others contended that agreement with the fishery agencies and tribes is an unrealistic goal, and that the Council should not attempt to mandate agreement between entities whose responsibilities are fundamentally different. The Corps asserted that past failures to agree are the result of the agencies' and tribes' refusal to recognize the Corps' responsibilities or the Program's survival goal. The Corps also maintained that its management of spill is the most efficient method available.

Response: Commenters have raised substantial issues regarding the proper allocation of management authority, and the advisability of a spill volume. However, the Council believes that some of these issues, and particularly their legal ramifications, have not been adequately examined and explained by the parties in this interim rulemaking. Accordingly, the Council is not attempting to resolve all the management and institutional issues raised by the commenters in this rulemaking. The amendments adopted by the Council are intended to respond to many of these concerns, however, by giving sufficient definition to the spill program to eliminate unnecessary disputes, and by calling on the tribes and fishery agencies to develop precise criteria for regulating spill, which criteria will be applied by the Corps in consultation with the Water Budget managers. The amendment will result in a percentage of spill, as suggested by CRITFC.

9. Implementation Problems

Comments: The Corps asserted that spill criteria should differ when firm energy would be affected, primarily because spills then must be quantified and included under the Coordination Agreement procedures. The Corps also maintained that Coordination Agreement planning has already begun for the 1986–87 seasons, and that additional spill cannot be guaranteed in a critical period, in derogation of what the Corps describes as BPA's "legal right to market their full FELCC based on a regime that does not contain provisions for the spill requirement (except for the last half of April and May spill at Lower Monumental)." The Corps also asserted that a predetermined spill volume could not be set for 1986 because BPA's firm energy levels are established by the annual operating plan a year in advance.

Response: Available evidence indicates that it is unlikely that 1986 will be a critical water year. Moreover, BPA raised no issue regarding infringment of its "legal rights" under Coordination Agreement procedures, and the Council puts little weight on the Corps' characterization of such a right. The Coordination Agreement does not require any party to operate a project inconsistent with its requirements for nonpower uses or functions (section 15), and Bonneville is required by the Northwest Power Act to use its fund and authorities consistent with the Council's Program (section 4(h)(10)(A)).

Finally, the Council will continue to study mainstem passage issues and problems, including consideration of biologically sound alternatives to spill.

Edward Sheets,

Executive Director.

[FR Doc. 86-4730 Filed 3-4-86; 8:45 am]

BILLING CODE 0000-01-M

POSTAL RATE COMMISSION

[Order No. 671; Docket No. A86-11]

Greene, Rhode Island 02827 (Barbara Rush, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 26, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-11.

Name of Affected Post Office: Greene, Rhode Island 02827.

Name(s) of Petitioner(s): Barbara Rush, and others.

Type of Determination: Closing.

Date of Filing of Initial Appeal Papers: February 18, 1986.

Categories of Issues Apparently Raised:

1. Observance of procedural requirements [39 U.S.C. 404(b)(1)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 5, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 18, 1986—Filing of Petition.

February 26, 1986—Notice and Order of Filing of Appeal.

March 17, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].

March 25, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

April 14, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

April 29, 1986—(1) Petitioner's Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 6,1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 18, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-4739 Filed 3-4-86; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 672; Docket No. A86-12]

Oakland, Rhode Island 02858 (Richard J. Lapierre, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 26, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-12.

Name of Affected Post Office: Oakland, Rhode Island 02858.

Name(s) of Petitioner(s): Richard J. Lapierre.

Type of Determination: Closing.

Date of Filing of Initial Appeal Papers: February 20, 1986.

Categories of Issues Apparently Raised:

1. Whether the Determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law [39 U.S.C. 404(b)(5)(A)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 7, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 20, 1986—Filing of Petition.

February 26, 1986—Notice and Order of Filing of Appeal.

March 17, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

March 27, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

April 16, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

May 1, 1986—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 8, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 20, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-4740 Filed 3-4-86; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 670; Docket No. A86-13]

Wellfleet, Massachusetts 02667 (Gerald Houk et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued February 25, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-13.

Name of Affected Post Office: Wellfleet, Massachusetts 02667.

Name(s) of Petitioner(s): Gerald Houk and others.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 18, 1986.

Categories of Issues Apparently Raised:

1. Whether Postal Service's action is subject to the requirements of 39 U.S.C. 404(b).

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 5, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 18, 1986—Filing of Petition.

February 25, 1986—Notice and Order of Filing of Appeal.

March 17, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111 (b)].

March 25, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

April 14, 1986—Postal Service Answering Brief [*see* 39 CFR 3001–115(c)].

April 29, 1986—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 6, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 18, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86–4741 Filed 3–4–86; 8:45 am]

BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Earnings and Disability Monitoring.

(2) Form(s) submitted: G–19, G–254.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion, annually.

(5) Respondents: Individual households, Businesses or other for-profit.

(6) Annual responses: 4,663.

(7) Annual reporting hours: 785.

(8) Collection description: The reports obtain information about an annuitant's employment and earnings. Under the RRA, an annuity can be reduced or not paid depending on the amount of earnings and type of work performed. Certain work may indicate a recovery from disability.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 4737 Filed 3–4–86; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22953/February 27, 1986; File No. SR–MCC–86–2]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Midwest Clearing Corporation Relating to Municipal Bond Comparison System (MBCS)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1986, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A are the revised procedures for implementation of the Municipal Bond Comparison System (MBCS).[1]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The procedures filed by Midwest Clearing Corporation relating to changes to the MBCS, operated by MCC to compare municipal securities transactions. These procedures reflect the implementation of Phase V of the national system for comparison of municipal trades. The procedures finalize the when-issued trading procedures previously filed in SR–MCC–85–5.[2] Additionally, these procedures will allow more efficient processing of syndicate takedown transactions.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in that it provides for the prompt and accurate clearance and settlement of securities transactions. The proposed change will facilitate municipal bond trade comparision, thus assisting the establishment of a national system for securities clearance and settlement.

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[1] The National Securities Clearing Corporation ("NSCC") acts as the hub for municipal securities comparison processing. MCC's procedures essentially mirror NSCC procedures approved in Securities Exchange Act Release Nos. 22116 (June 5, 1985), 50 FR 24730 (June 12, 1985) (File Nos. SR–NSCC–85–03) and 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) (File No. SR–NSCC–86–02).

[2] Securities Exchange Act Release No. 34–22392 (September 9, 1985), 50 FR 37754 (September 17, 1985).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–4800 Filed 3–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22954; File No. SR–MSRB–86–4]

Self-Regulatory Organization; Order Approving Rule Change by Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB") on January 6, 1986 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB Rule G–12 on uniform practice to provide confirmation of the concession as a percentage of the bond's price in dealer transactions in zero coupon, compound interest, and multiplier municipal securities. In its filing the MSRB indicates that the requirements imposed by the rule change are consistent with industry practices.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 22807 (51 FR 3290; January 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: February 26, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–4802 Filed 3–4–86; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 26, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Mesa Limited Partnership

Depositary Units (File No. 7–8846)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 20, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–4801 Filed 3–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14963; 812–6258]

David Lerner Associates, Inc.; Filing of Application

February 27, 1986.

Notice is hereby given that David Lerner Associates, Inc. ("Lerner Associates" or "Applicant"), 477 Jericho Turnpike, Syosset, New York 11791, has filed an application requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940 (the "Act") exempting it from section 9(a) of the Act and for an order of temporary exemption from section 9(a) pending the determination of the Commission on its application for permanent exemption. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provision thereof.

According to the application, Lerner Associates is a registered broker-dealer specializing in municipal and United States Government securities with four offices in New York, Connecticut and New Jersey. Lerner Associates seeks to become the principal underwriter of a recently established investment company, Sprit of America Government Fund, Inc. ("Fund"). According to the Application, Fund will invest in U.S.

Treasury securities and securities issued by agencies of the U.S. Government or instrumentalities established or sponsored by the U.S. Government.

This application concerns the conduct of one of Applicant's approximately 160 employees, Benjamin Rabin, at a time prior to his affiliation with Applicant. On April 18, 1984, a consent judgment was entered in the United States District Court for the Southern District of New York against Rabin and a corporation of which he was a principal, prohibiting them from engaging in certain conduct in violation of section 5 of the Securities Act of 1933. This judgment arose from a complaint filed on December 17, 1980 against Rabin, the corporation and 37 other defendants in *Securities and Exchange Commission* v. *Cable/Tel Corp., et al.*, S.D.N.Y., 80 Civ. 7170 (MEL). The employee agreed to the issuance of this judgment without admitting or denying the allegations of the Commission's complaint upon which the proceeding was based. The employee become affiliated with Lerner Associates at the firm's Teaneck, New Jersey office in April, 1985 subsequent to the issuance of the consent judgment. His activities at Lerner Associates are limited to the sale of certain securities, and he is subject to strict supervisory controls.

Section 9(a) of the Investment Company Act, as is relevant here, disqualifies any person or company from serving or acting in the capacity of an investment adviser, principal underwriter or depositor of any registered open-end company or registered unit investment trust, if such person has been permanently or temporarily enjoined from engaging or continuing any conduct or practice in connection with its activities as an underwriter, broker, dealer or investment adviser, or in connection with the purchase or sale of any security or if an affiliated person of such person or company has been so enjoined. Accordingly, absent an exemption from section 9(a) the consent judgment against the employee would prevent Lerner Associates from serving as the principal underwriter of the Fund.

Section 9(c) of the Investment Company Act provides that upon application the Commission shall by order grant an exemption from the provisions of section 9(a) of the Act, "either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to [Applicant], are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application."

Applicant submits that the prohibitions of section 9(a) of the Investment Company Act would be unduly and disproportionately severe as applied to it and that its conduct has been such as not to make it against the public interest or protection of investors to grant the requested exemption. In support of this contention, Applicant represents that:

(1) The conduct giving rise to the disability herein was in no way traceable to Lerner Associates;

(2) The employee whose conduct gives rise to the disability herein does not occupy a management or supervisory position at Lerner Associates;

(3) The employee in question is authorized to engage in only limited sales activities and is subject to strict supervision by the Branch Manager of the Teaneck, New Jersey office;

(4) Denial of the requested order would unfairly penalize the firm and its other approximately 160 employees for something for which they had no responsibility; and

(5) Applicant has adopted a broad array of measures designed to prevent a recurrence of the conduct which gave rise to the disability herein.

Based upon the foregoing, Lerner Associates submits that its application should be granted.

The Commission has considered the matter and finds that the prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Lerner and that the conduct of Lerner has been such as not to make it against the public interest or protection of investors to grant the application of Lerner for a temporary exemption from section 9(a) pending determination of the application.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that Lerner is hereby temporarily exempted from the provisions of section 9(a) of the Act, pending final determination by the Commission of Lerner's application for an order permanently exempting Lerner from the provisions of section 9(a).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86-4803 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24033; 70-7216]

Pennsylvania Electric Co. et al., Proposed Repayment Agreements Providing for Letters of Credit

February 27, 1986.

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey and Metropolitan Edison ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania, all subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

Penelec, JCP&L and Met-Ed (collectively, the "Companies") intend to obtain unsecured bank letters of credit ("Letters of Credit") issued in favor of the Pennsylvania Department of Environmental Resources ("PaDER") and/or the New Jersey Department of Environmental Protection ("NJDEP") to secure the Companies' obligations under certain regulatory requirements pertaining to waste disposal facilities. The Companies propose to enter into separate Repayment Agreements ("Agreements") with banks. Under the Agreements, the Companies would be severally obligated to repay on demand any amounts (but only to the extent of each company's allocable share thereof in the case of the jointly owned stations) which the banks may pay to the PaDER or the NJDEP, under the Letter of Credit, together with interest and fees as more fully disussed in the declaration. It is proposed that the Letters of Credit for Penelec's facilities will be in an

aggregate principal amount of up to $2,000,000. The obligations for JCP&L's and Met-Ed's facilities will be in an aggregate amount of up to $250,000 and $450,000, respectively.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4804 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Government Purchases of Products From Countries Designated Under the Caribbean Basin Economic Recovery Act

Correction

In FR Doc. 86-4247 beginning on page 6964 in the issue of Thursday, February 27, 1986, make the following correction: On page 6965, first column, thirteenth line, "1985" should have read "1995".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirments of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a publci hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before April 25, 1986, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Indiana Transportation Museum

(Waiver Petition Docket Number RSGM-85-24)

The Indiana Transportation Museum (ITM) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 16 passenger cars. The ITM indicates that these cars operate on a limited schedule through areas not subject to extensive vandalism and have carried over 60,000 passengers without injury. The petitioner is requesting this temporary waiver to allow for the orderly installation of certified glazing.

Maryland State Railroad Administration

(Waiver Petition Docket Number RSGM-85-27)

The Maryland State Railroad Administration seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one passenger car. The petitioner plans to operate this car as a backup unit in commuter service between Baltimore, Maryland, Washington, DC, and Martinsburg, West Virginia. A temporary waiver is requested to allow time to complete the installation of certified glazing.

The Chicago, West Pullman and Southern Railroad Company

(Waiver Petition Docket Number RSGM-85-28)

The Chicago, West Pullman and Southern Railroad Company, Wisconsin and Calumet Division (WICT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and two cabooses. The WICT operates on 90 miles of track in a rural area of south central Wisconsin near Janesville. The petitioner states there have been no reported acts of vandalism and feels that compliance with FRA saftey glazing requirements is unnecessary.

Merchant Grain and Transportation, Inc.

(Waiver Petition Docket Number RSGM-85-29

The Merchant Grain and Transportation, Inc. (MGT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive, #1210. The MGT plans to operate a short line railroad at Jeffersonville, Indiana. The petitioner states that they have not encountered any acts of vandalism and feels that compliance with FRA safety glazing requirements is unnecessary.

Chicago, Central and Pacific Railroad Company

(Waiver Petition Docket Number RSGM-86-1)

The Chicago, Central and Pacific Railroad Company (CCP) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 15 cabooses. The CCP plans to operate on approximately 674 miles of track purchased from the Illinois Central Gulf Railroad (ICG). The track is located between Omaha, Nebraska, and just east of Chicago, Illinois, with branch lines from Fort Dodge to Sioux City, Iowa, and from Manchester to Cedar Rapids, Iowa. The CCP states that the majority of the track runs through rural areas and small towns with the exception of Omaha, Nebraska, and Waterloo and Cedar Rapids, Iowa. The petitioner indicates that the ICG has not experienced any window glazing safety problems with these cabooses during the past two years. The temporary waiver is requested to allow time for the CCP to retrofit these 15 cabooses with certified glazing.

Old Augusta Railroad Company

(Waiver Petition Docket Number RSGM–86–2)

The Old Augusta Railroad Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive, #100. The locomotive operates on 2½ miles of track near New Augusta, Mississippi, and sees limited use as an emergency backup unit. The petitioner states they have had no problems with vandals and feels that compliance with FRA safety glazing requirements is unnecessary.

Lackawanna Valley Railroad

(Waiver Petition Docket Number RSGM–86–3)

The Lackawanna Valley Railroad (LVAL) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for side glazing on one locomotive, #901. The LVAL operates on 25 miles of track located in Lackawanna County, Pennsylvania, and leased from the Lackawanna County Railroad Authority. The petitioner indicates there have been no incidents of vandalism to their locomotive, and no injuries have occurred as a result of side window breakage. The LVAL states that the locomotive has FRA approved glazing in the front and rear windows and feels the installation of certified side glazing is unnecessary.

Bay Colony Railroad Corporation

(Waiver Petition Docket Number RSGM–86–4, SA–86–1 and LI–86–1)

The Bay Colony Railroad Corporation (BCLR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223), the Safety Appliance Standards (49 CFR Part 231), and the Locomotive Safety Standards (49 CFR Part 229) for one locomotive, #BCLR 151. The locomotive glazing presently installed is DUOLITE Safety Glass and does not comply with 49 CFR Part 223. The locomotive handholds and switching steps do not comply with 49 CFR Part 231. The locomotive is not equipped with a speed indicator (49 CFR 229.117), headlight dimmer switch (49 CFR 229.125) and a slip-slide alarm (49 CFR 229.115). BCLR 151 is a 25 ton industrial type locomotive built by General Electric in 1942. The BCLR indicates the locomotive will be used largely on trackage within yard limits.

Port Authority Trans-Hudson Corporation

(Waiver Petition Docket Number LI–86–6)

The Port Authority Trans-Hudson Corporation (PATH) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229). PATH has ordered 95 electrically self propelled passenger cars, which are considered "MU locomotives" under FRA regulations, and specified that these units be built to comply with subsection (b) of § 229.141. Subsection (b) sets body structure design standards for new locomotives operated in trains having a total weight of less than 600,000 pounds. Subsection (a) sets higher design standards for locomotives used in trains weighing over 600,000 pounds. The new cars will weigh approximately 68,400 pounds per unit, and when operated as planned in 10 unit trains, the gross empty weight will exceed the 600,000 pounds limit set forth in Subsection (b). The railroad is, therefore, seeking a waiver of compliance from the regulation in order to be allowed to build the MU locomotives to the less stringent requirements of § 229.141 (b) rather than those of § 229.141 (a).

Issued in Washington, DC, on February 28, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–4771 Filed 3–4–86; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

[Docket No. IRA–32]

Cascade Fireworks, Inc., Application for Inconsistency Ruling; Notice of Termination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Termination of application for inconsistency ruling.

SUMMARY: This document terminates Docker No. IRA–32 by which RSPA solicited comments on the merits of an application for an inconsistency ruling filed by Cascade Fireworks, Inc., an Oregon Corporation (Cascade) (49 FR 44048, November 1, 1084).

In its application, Cascade requested the RSPA determine whether Oregon Revised Statute (ORS) 480.120(1)(a), dated October, 1983, governing the shipment and transportation of fireworks within the State of Oregon, was inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA. On June 13, 1985, the Oregon legislature enacted Oregon House Bill 2939 A-Engrossed, amending ORS 480.120(1)(a) and other provisions related to fireworks. The amendments became effective January 1, 1986. The enactment amends ORS 480.120(1)(a) by deleting the language formerly restricting shipments of fireworks to common carriers only. As a result of this amendment, the question of inconsistency as posed in Cascade's application is moot. Therefore, Docket No. IRA-32 is hereby terminated.

Signed in Washington, DC on February 28, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–4827 Filed 3–4–86; 8:45 am]

BILLING CODE 4910–60–M

[Docket No. IRA–34]

Application for Inconsistency Ruling; State of Illinois, Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA) DOT.

ACTION: Extension of time for public comment.

SUMMARY: This notice extends the public comment period for IRA–34 (50 FR 45186, October 30, 1985).

DATE: Comments should be received within forty-five (45) days of the date of publication of this notice. (Late filed comments will be considered to the extent practicable.)

ADDRESSES: The application and all related correspondence and comments may be reviewed in the Dockets Branch, Office of Hazardous Materials Transportation, Room 8426, 400 Seventh Street, SW., Washington, DC 20590. Comments on the application may be submitted to the Dockets Branch at the above address. To ensure proper handling, indicate Docket No. IRA–34 on your submission. Three copies of each submission are requested.

A copy of each comment must also be sent to the following, individuals:

Mr. Jack McKay, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, DC 20036

Mr. Henry L. Henderson, Assistant Attorney General, Environmental Control Division, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601.

Certification of the fact that copies have been sent to these individuals is to be indicated on any comments submitted to the Dockets Branch. [The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. McKay and Henderson at the addresses noted in the Federal Register."]

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590. (Tel: 202/755-4972).

SUPPLEMENTARY INFORMATION: On October 30, 1985, RSPA published a notice for comment concerning Wisconsin Electric Power Company's application for an administrative ruling on the question of whether an Illinois statute, which imposes a fee of $1000 per cask upon owners of spent nuclear fuel being transported through Illinois, is inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

The public comment period was scheduled to end on December 20, 1985. Because a number of prospective commenters requested additional time, RSPA extended the comment period to January 21, 1986. RSPA subsequently received requests from the State of Illinois and the Electric Utility Companies' Nuclear Transportation Group to reopen the comment period for this proceeding. Both requestors cited the need for an opportunity to respond to arguments first raised in comments submitted in response to the public notice. In the interest of compiling a comprehensive administrative record from which to develop a ruling, RSPA is hereby reopening the comment period on IRA-34 for a 45-day period commencing with the publication of this notice in the **Federal Register**

Issued in Washington, DC, on February 28, 1986.

Alan I. Roberts,

Office of Hazardous Materials Transportation.

[FR Doc. 86-4826 Filed 3-4-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0018
Form Number: IRS Forms 706-B(1) and 706-B(2)
Type of Review: Extension
Title: Information Return by Trustee for Taxable Distribution or Termination from a Generation-Skipping Trust (706-b(1)); and Beneficiary's Share of a Taxable Distribution From a Generation-Skipping Trust (706-B(2))

OMB Number: 1545-0495
Form Number: IRS Form 4506-A
Type of Review: Extension
Title: Request for Public-Inspection Copy of Exempt Organization Tax Form

OMB Number: 1545-0110
Form Number: IRS Form 1099-DIV
Type of Review: Extension
Title: Statement for Recipients of Dividends and Distributions

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0092
Form Number: ATF F 5100.31 (1648/1649/1650)
Type of Review: Extension
Title: Application for Certification/Extension of Label/Bottle Approval under the Federal Alcohol Administration Act

Clearance Officer: Roy J. Betsill, (202) 566-7641, Bureau of Alcohol, Tobacco, and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1986.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 4718 Filed 3-4-86; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Delegation Order 25; Docket No. 86-6]

Organization and Functions; Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, and by Treasury Order No. 129 (Rev. No. 2), dated April 22, 1955, it is ordered as follows:

A. During a vacancy in the Office or during the absence or disability of the Comptroller, the following officers shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency in the order of succession enumerated:

(1) Senior Deputy Comptroller for Bank Supervision,

(2) Senior Deputy Comptroller for Policy and Planning,

(3) Deputy Comptroller for Multinational Banking,

(4) Chief National Bank Examiner,

(5) Deputy Comptroller for the Midwestern District.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptroller for the districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency or the Secretary of the Treasury, whether or not otherwise delegated, which is essential to carry out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 24 is hereby repealed.

Dated: February 26, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-4729 Filed 3-4-86; 8:45 am]

BILLING CODE 4810-33-M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; National American Insurance Company of New York

Notice is hereby given that the Certificate of Authority issued by the Treasury to National American Insurance Company of New York, under

the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27123, July 1, 1985.

With respect to any bonds currently in force with National American Insurance Company of New York, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2319.

Dated: February 25, 1986.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86–4710 Filed 3–4–86; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 43
Wednesday, March 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 52b), notice is hereby given that at 3:53 p.m. on Thursday, February 27, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Gorman, Gorman, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, February 27, 1986; (2) accept the bid for the transaction submitted by Citizens State Bank, Gorman, Texas, a newly-chartered State nonmember bank; (3) approve the applications of Citizen State Bank, Gorman, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Gorman, Gorman, Texas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) consider recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,350-L (2nd Amendment)
The First National Bank of Midland, Midland, Texas
Memorandum and Resolution re:
The First National Bank in Humboldt, Humboldt, Iowa

(C) consider recommendations regarding the Corporation's assistance agreements with inspired banks pursuant to section 13 of the Federal Deposit Insurance Act; and

(D) consider a request for financial assistance pursuant to section 13(c)(1) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael Patriarca, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: February 28, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-4860 Filed 3-3-86; 8:45 am]

BILLING CODE 6717-01-M

2

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 12, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC-170 (Sub-No. 1)—
Short Notice Effectiveness For Independently Filed Single-Factor Motor-Water Rates.
Ex Parte No. MC-176—
Short Notice Effectiveness For Independently Filed Motor Passenger Carrier Rates.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary

[FR Doc. 86-4725 Filed 2-28-86; 11:36 am]

BILLING CODE 7035-01-M

3

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, March 14, 1986, and continue until all official business is completed.

PLACE: Holiday Inn—North, Spanish Oaks 1 & 2, I-55 North Frontage Road, Jackson, Mississippi 39206.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Discussion and Action on the Recommendations of the Operations and Regulations Committee
   —Denial of Refunding—45 CFR Part 1625
   —Definition of "Private Attorney" 45 CFR Part 1614
   —Questioned Costs—45 CFR Part 1630
3. Discussion and Action on the Recommendations of the Audit and Appropriations Committee
   —FY 1986 Consolidated Operating Budget
4. Public Comment

CONTACT PERSON FOR FURTHER INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date Issued: March 3, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-4925 Filed 3-3-86; 3:56 pm]

BILLING CODE 6820-35-M

federal register

Wednesday
March 5, 1986

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 7, 25, 245, and 252
Beer; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 7, 25, 245, and 252

[T.D. ATF-224; Reference Notice No. 449]

Beer

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is revising and recodifying regulations regarding the qualification of breweries, the production and removal of beer and cereal beverages, and the tax payment of beer. The regulations in 27 CFR Part 245 are reissued as Part 25. These regulations incorporate a large number of IRS revenue rulings and AFT rulings. Many substantive changes are adopted which will relieve the regulatory burden on brewers, and result in some cost savings.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum or Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

General

This final rule is part of ATF's plan to review, update, and reissue all of its regulations. Restrictive regulations have been deleted where possible. Twenty eight IRS and ATF rulings have been incorporated into the regulations or declared obsolete. The number of regulatory sections has been reduced to 146, eliminating 27 sections. Ten letterhead notices or applications have also been eliminated leaving only 18 notices or applications, most of which are one-time notices. Four Government forms have been replaced by commercial records while one additional form has been eliminated altogether. Finally, all of the sections in this part have been rewritten to improve their clarity and understanding.

Notice Number 449

ATF published Notice No. 449 in the **Federal Register** on February 3, 1983 (48 FR 4803). That notice proposed revision of the beer regulations and reissuance of 27 CFR Part 245 as 27 CFR Part 25. A 90-day comment period was provided for the submission of written comments.

In response to Notice No. 449, ATF received 5 written comments. Respondents were the United States Brewers Association (U.S.B.A.), the G. Heileman Brewing Company, the Miller Brewing Company, Anheuser-Busch Companies, and the Surety Association of America, an association representing over 500 companies which write surety bonds.

All respondents generally favored the proposed regulations. Their specific comments are set forth below according to subject matter. ATF received no requests to hold a public hearing and consequently did not hold a hearing regarding these regulations.

Storage of Taxpaid Beer

G. Heileman requested that § 25.23, 25.24, and 25.213 be amended to provide for the storage of taxpaid beer on brewery premises. Heileman stated that required recordkeeping is adequate to protect the revenue. Their comment envisions automatic extension or curtailment of brewery premises to accommodate taxpaid beer, and a simpler method of obtaining ATF approval for such storage.

In the past, ATF has approved numerous variances allowing brewers to store taxpaid beer of other brewers' production on brewery premises. In view of the many past approvals, ATF is authorizing storage of taxpaid beer in § 25.24 under the following conditions:

(1) Taxpaid beer may not be of the brewer's own production;

(2) Taxpaid beer will be segregated in such a manner as to preclude mixing with untaxpaid beer;

(3) The brewer will have a wholesaler's or importer's permit, when required, and keep appropriate records of the taxpaid beer;

(4) Taxpaid beer will be in packages or kegs, i.e., no bulk beer; taxpaid beer may not be relabeled;

(5) Taxpaid beer transactions will not be shown on required brewery records;

(6) The brewer will purchase a special tax stamp as a wholesaler, if required; and

(7) The regional director (compliance) may require physical segregation of taxpaid beer or marking to show the status of taxpaid beer, if necessary to protect the revenue.

Beer of the brewer's own production being returned to the brewery is eligible for an offset under § 25.159 if returned to the brewery from which removed, or for an adjustment to the tax return if removed from another brewery under § 25.213. This beer may not be stored taxpaid at the brewery premises under § 25.24.

Marking of Rooms and Tanks

Anheuser-Busch and Miller requested deleting the requirement in § 25.32 to mark each room or division of the brewery with a sign designating its use. Miller also suggested eliminating the requirement in § 25.35 to mark the serial number on each tank in the brewery. Both brewers stated these are unnecessary burdens on the industry and of little value.

ATF agrees that there is little benefit to require marking each room or division of a brewery with a sign designating its use. Consequently, this requirement was dropped by deleting proposed § 25.32.

With respect to marking serial numbers (and capacities marked on tanks under § 25.35(a)), ATF believes these markings have value in taking inventories at breweries, both for brewers and for ATF officers. Therefore, this requirement is not changed. As proposed, this section does not require the "use" to be marked on each stationary tank.

Measuring Systems

Subpart E, Measurement of Beer, requires brewers to measure the quantity of beer transferred from brewery cellars to packaging operations. The actual system of measurement is left to the brewer who may now use the system best suited to brewery operations. A brewer may continue to employ a beer meter or may use other systems such as a gauge glass or tank readings. Under § 25.42, the brewer is required to test and adjust meters, gauge glasses, or other devices used, to insure their accuracy and is required to keep records of those tests.

No comments were addressed to this subpart and Subpart E is adopted without change from the notice.

Brewery Qualifications

Subpart G, Qualifications of a Brewery, contains regulations relating to the filing of notices and qualifying documents (except bonds). This subpart replaces Part 245: Subpart G, Notices; Subpart J, Approval of Documents; Subpart L, Changes in Name, Proprietorship, Control, Location, Premises, and Equipment; and Subpart M, Notice of Discontinuance of Business.

Brewer's notice. The brewer's notice, Form 27-C, is redesignated Form 5130.10.

Under Subpart G, the brewer's notice remains in effect on a continuing basis; it does not require renewal every 4 years. However, under § 25.71, the regional director (compliance) may at any time require a brewer to give a

superseding notice in conjunction with the filing of a new brewer's bond.

Section 25.71 also allows brewers to file amended notices within 30 days of a change rather than within 10 days of the change. Changes in proprietorship or in partnership generally require the filing of a new notice before commencing business. Section 25.74 allows brewers to file a list of changes in the stockholders in the corporation annually on July 1, rather than within 30 days of the changes.

Under § 25.66, brewers no longer need to submit articles of incoporation with the brewer's notice. However, this section requires that the articles of incorporation, corporate bylaws, and certificate authorizing the brewer to do business in the State be kept available at the brewery for inspection by ATF officers. Miller requested clarification of this section to allow these corporate documents be made available for inspection at the brewer's home brewery, when in the case of a multiplant company, this information is referenced in the various brewers notices to the brewer's notice covering the home brewery. Miller's request was anticipated by the proposed regulations. However, to clarify their intent, § 25.66(d) states that these documents need only be available for inspection at the brewer's home brewery. Each brewer's notice filed by a multiplant brewer will also be required to state the location where these corporate documents may be examined.

Miller also requested amendment of § 25.75 to delete the requirement that new brewer's notices be filed due to changes in officers or directors of the corporation. As an alternative, they suggested that only a new notice for the brewer's home brewery be filed to reflect such changes. ATF finds the intent of §§ 25.62(b) and 25.75 is to allow for filing of a brewer's notice only at the brewer's home brewery when this information is incorporated by reference under § 25.62(b) at other plants. However, § 25.75 has been modified to make it clear that only the brewer's notice at the home brewery need be amended due to changes in officers and directors.

The requirement to include a list of major brewery equipment on the brewer's notice has been deleted. Also deleted is the requirement to include copies of certificates issued by offices where brewer's trade names are registered. Several elements have been added to the brewer's notice. These include a statement of the brewer's business day, evidence of control to allow transfers of beer without payment of tax between breweries, and the statement of process by which a brewer will render beer unfit for beverage use.

Section 25.62, Data for notice, simplifies existing instructions relating to the filing of corporate documents and the description of the brewery.

Although ATF will not require brewers to file new brewer's notices with the effective date of these regulations, because of the changes in the form, a new and complete notice will be required the next time a brewer intends to file a new or amended brewer's notice.

Statement of process. Fermented beverages produced and marketed under the designations of "lager" or "malt liquor" have been added to those for which no statement of process is required ("beer," "ale," "porter," and "stout"). Products such as flavored beer, flavored malt liquor, cereal beverages, "malt beverages," and the like still require the filing of a statement of process under §§ 25.62(a)(10) and 25.67.

A new section, § 25.67, covers the statement of process. It requires that the base product conform to the definition of "beer." It is ATF's position that all fermented products (except sake, a wine which is included under "Beer," and cereal beverages which are nontaxable) produced by a brewer should have the characteristics of beer in order to insure their proper tax classification, and to insure that they may be produced at a brewery.

G. Heileman commented that proposed § 25.67 required products for which a statement of process was filed to have the characteristics of "beer" as defined in § 25.11. Heileman noted that cereal beverages are not "beer" and not subject to tax, but are covered by a statement of process. They further requested that all regulatory requirements concerning cereal beverages be relaxed, including the requirement to file a statement of process.

Section 25.67 has been modified by stating that cereal beverages need not have the characteristics of "beer." However, ATF believes that it is important to file statements of process for cereal beverages to insure that their manufacture will result in a product which is non-taxable. Similarly, ATF believes that a statutory change in the Internal Revenue Code would be necessary to eliminate other requirements relating to cereal beverages.

Section 25.67 requires brewers who change a statement of process to receive ATF approval prior to using the changed process. Prior approval of a brewer's statement of process will insure proper tax classification of products produced at breweries, and will insure that only beverages which may be produced at breweries are so produced. This change is consistent with the approval of formulas for wine or distilled spirits products prior to their production.

Incorporation of qualifying documents by reference. Section 25.62(b) permits a brewer to incorporate certain organizational documents by reference into the brewer's notice. These organizational documents may be filed for any type of premises such as a distilled spirits plant or another brewery, and may be filed in any ATF region.

Plats. The requirement for brewers to prepare and submit plats of the brewery premises, now contained in Subpart I of Part 245, is deleted.

Alternation of operations. In response to several inquiries from brewers wishing to produce or bottle wine, a new section has been added to Subpart G. Under § 25.81, a brewer may alternate a portion of the brewery between a brewery and a bonded winery or a taxpaid wine bottling house. After receiving approval of the qualifying documents as a bonded or taxpaid wine premises, and obtaining a new brewer's bond or consent of surety, a brewer may alternate to a wine premises by filing a notice with the ATF area supervisor prior to the change in premises. All beer must be removed prior to qualifying the premises as a bonded or taxpaid wine premises, and all wine must be removed prior to alternating the premises back to a brewery. Records of wine and other requirements relating to wine are found in Parts 231 and 240 of this chapter.

Bonds and Consents of Surety

Only one comment, from the Surety Association of America, was addressed to surety bonds. All proposed regulations dealing with bonds have been adopted without change. Anheuser-Busch commented on allowing surety bonds to be continuing rather than requiring resubmission every 4 years. ATF, however, cannot adopt this comment since 26 U.S.C. 5401 specifically requires a new bond every 4 years. The Brewer's Bond, Form 1566, is renumbered Form 5130.22, and the Brewer's Bond Continuation Certificate, Form 1566–A, is renumbered Form 5130.23.

Under § 25.93, the penal sum of the bond would be equal to 10 percent of the amount of tax a brewer would be liable for during a calendar year during the period of the bond. For example, if a small brewer removed 300,000 barrels of beer a year subject to tax and made no

other removals, the penal sum of the bond would be determined as follows:

60,000 barrels @ $7=$420,000
240,000 barrels @ $9=$2,160,000
Annual liability=$2,580,000.

The penal sum would be 10 percent of this or $258,000. A brewer would, however, be free to obtain a bond with a greater penal sum. Maximum and minimum penal sum remain at $500,000 and $1,000, respectively.

With the change in calculating the penal sum, § 25.175 requires brewers to prepay the tax on removals when their outstanding tax liability exceeds the limits of coverage on the bond (when less than the maximum penal sum), until the outstanding tax liability is reduced below the bond coverage. Rules for prepayments are contained in § 25.175.

These changes are intended to aid small brewers in obtaining brewer's bonds and to allow them to purchase smaller bonds.

Special Tax Stamps

Section 25.112 recognizes that many brewers are wholesale dealers in beer. Brewers who purchase for resale beer produced by other brewers are required to purchase special tax stamps as wholesalers. ATF notes that brewers purchasing beer from other brewers or importing beer and storing it taxpaid on brewery premises under § 25.24 are liable for special tax as wholesalers; the exemption in 26 U.S.C. 5113(a) does not apply to sales of other brewers' taxpaid beer.

Marks, Brands and Labels

Subpart J, Marks, Brands and Labels, contains requirements for the marks on bottles, cans, kegs, barrels, and other containers used to remove beer from the brewery.

Marks on barrels and kegs, bottles, and cans. Under § 25.141, a brewer may utilize a coding system to show the actual place of production when the brewer operates two or more breweries. A brewer need only notify the regional director (compliance) of the coding system to be used, rather than apply to use a particular coding system. Similarly, a brewer may use a coding system for labels used on bottles and cans upon notification to the regional director (compliance) under § 25.142.

Although not incorporated into § 25.141, ATF notes that barrels or kegs need not be owned by the brewer and may be leased if they bear the required markings of the brewer filling them.

Tolerance in filling bottles and cans. Section 25.142, Bottles, incorporates Revenue Ruling 71–227 which defines "good commercial practice" in the filling of bottles and cans, and establishes a tolerance from the stated label fill. Under the revenue ruling, the tolerance was not more than plus or minus 0.5 percent, determined by comparing the brewer's fill test records with stated label contents, calculated on not less then 3 consecutive months.

The ruling is further modified by establishing the tolerance on each 3 month period. This removes any ambiguity in application of the section while providing a long enough time period to allow for normal fluctuations in filling bottles and cans. A statement of tax liability has also been inserted into the section. Although no tax will be collected on removals when the fills are within the prescribed tolerance (±0.5%) in a three month period, and when filling is conducted in compliance with good commercial practice, the brewer is liable for tax on the *entire amount* of overfill when the fill tolerance has been exceeded for a three month period, or when the brewer does not fill in compliance with good commercial practice. This statement reflects long-standing ATF policy on overfills which is incorporated in regulations in § 25.156 for keg beer (formerly § 245.113).

Case markings. Under § 25.143, a brewer may use unmarked cases when cartons containing beer or the visible portions of bottles or cans within the case show the required markings. If the required markings are on the case, they may be placed anywhere on the case including the bottom.

Other markings. Under §25.145, the designation "beer" is included with the mandatory markings on bulk containers of beer removed from a brewery without payment of tax, for export or for transfer to another brewery of the same brewer.

Tax on Beer

Subpart K contains regulations concerning the determination and payment of tax on beer. Sections 25.156 and 25.157 are modified by requiring taxable removals to be summarized daily by rounding to the second decimal place rather than being reduced to the third decimal place by dropping the 4th and 5th decimal places. Miller Brewing Company questioned the need to compute quantities to the 5th decimal place such as the table of cases in § 25.158. AFT, however, is retaining the requirement to compute barrelage quantities to five decimal places since a very accurate factor per case is necessary to insure accurate barrelage quantities when hundreds of thousands of cases are removed subject to tax every day at large breweries. The resulting barrelage quantity may, however, be rounded to two decimal places rather than three with no loss of accuracy.

Size of containers. The tax computation on bottled beer in § 25.158 reflects a barrel equivalent for cases containing 48–7 oz. bottles. This size was added at the request of both Miller and Anheuser-Busch. Corrections were made in the barrel equivalents for cases of 40–7 oz. bottles, 48–10 oz. bottles, and 50–12 oz. bottles.

In their comment, Heileman requested that the limitations on the size of containers in which beer may be removed from the brewery be eliminated or expanded.

ATF notes that under § 25.158, beer may be removed in bottles and cans of any size, including beer in unlisted case sizes. Brewers may not remove beer taxpaid in containers larger than a hogshead (62 gallons) by virtue of the language of 26 U.S.C. 5412, although regulations provide for removal of beer in bulk containers for purposes other than for consumption or sale (export, transfer between breweries, use in manufacturing). ATF is not at this time adopting new sizes for barrels or kegs outside of those fractional parts authorized by § 25.156 since no need for additional keg sizes has been shown. We are, however, receptive to additional keg sizes if a need for them is demonstrated.

Offsets. Section 25.159 contains the provisions of ATF Ruling 79–6, somewhat modified. This section prohibits a brewer from receiving an offset or deduction for beer returned to the brewery if the brewer does not issue credit to the customer who returned the beer within 30 days after the return of the beer to the brewery. A brewer who takes an offset or deduction for returned beer, but who does not timely credit the customer for an amount at least equal to the tax, is required to make an increasing adjustment on the next tax return.

Prepayment of tax. Section 25.174 allows a brewer to prepay tax on removals of beer when the penal sum of a brewer's bond (in less than the maximum penal sum) is not sufficient to cover outstanding tax liability.

Removal of Beer Without Payment of Tax

All provisions of Part 245 relating to the removal of beer from a brewery without payment of tax appear in Subpart L, Removals Without Payment of Tax.

Transfer of beer between breweries. Regulations governing the transfer of beer between breweries of the same

ownership are included in §§ 25.181.25.186.

Form 2035, Notice of Transfer of Untaxpaid Beer, has been eliminated. In place of this form, § 25.186 requires the shipping brewer to prepare a commercial record for invoice for the beer to be transferred. This invoice is serially numbered and information shown is similar to that appearing on Form 2035.

The shipping brewer will prepare the invoice, in duplicate, and upon shipment furnish the original to the receiving brewer and file the other copy. The receiving brewer will note any discrepancy in the beer received on a copy of the invoice and maintain this invoice with the brewery records. These invoices will be used by both brewers to prepare their daily records and their monthly reports.

Under § 25.181, the shipping brewer may reconsign beer while in transit or may return beer to the shipping brewery for any reason, and beer may be reconsigned to any brewery of the same ownership. When beer is reconsigned during transit, § 25.186 requires the shipping brewer to void all copies of the first invoice and prepare a new invoice showing the new recipient, or to mark all copies of the original invoice with "Reconsigned to," followed by the name and address of the new receiving brewery. The new invoice will be distributed and filed in the same manner as the original invoice.

Section 25.184 requires a brewer to file a claim for remission of tax liability on beer lost during transit when the loss exceeds 2 percent of the quantity transferred. As proposed, this section would have also required immediate reporting of loss of any beer in cases or in kegs or barrels to the regional director (compliance). Miller objected to this proposal on the basis that it would increase paperwork and have little beneficial effect. ATF agrees with Miller's comment and has deleted proposed § 25.184(d)(2). Brewers must continue to make immediate report of losses due to theft or other unusual reason.

Removal of beer unfit for beverage use. Under § 25.191, a brewer may deliberately render beer unfit for use and remove it without payment of tax for use in manufacturing, as well as remove beer which had unintentionally become unfit for beverage use. An application is no longer required; however, if brewers intend to render beer unfit for beverage use, they must file a statement of process as part of the brewer's notice, Form 5130.10. Section 25.192 has been clarified to allow removal of sour or damaged beer in bulk containers.

Export of beer. Section 25.203 allows brewers to export beer without payment of tax in bulk containers (tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of vessels), as well as bottles and cans or kegs and barrels. Additionally, § 25.14, tanks, vehicles and vessels, requires the same markings on bulk containers of beer removed without payment of tax from a brewry for export that are required for bulk containers removed for transfer to another brewery. A conforming change to allow export of beer in bulk containers has been made to § 252.143, Containers [a new section].

Miller requested that changes be made in the export regulations, Part 252, relating to beer being exported. First, they requested that IRS Revenue Ruling 71–208 allowing use of an ocean bill of lading as proof of exportation be incorporated into the part. They also requested that "Export" marks required on cases of beer exported be deleted when export shipments are made directly by the brewer and are supported by appropriate shipping documents.

ATF agrees that IRS Revenue Ruling 71–208 concerning ocean bills of lading should be incorporated into Part 252. Consequently, a new section, § 252.43, has been added which allows use of the ocean bill of lading in lieu of Customs certification of ATF Form 1689. In addition, this section permits other proof of exportation to be used including other bills of lading and landing certificates executed by officials of foreign nations or U.S. possessions. Approval from the regional director (compliance) is no longer required for the alternate forms of export certification specified § 252.43. Alternate forms of certification not listed may be used on approval of the regional director (compliance).

ATF has also deleted the requirement to mark each case of beer with "Export" marks when beer is directly exported by the brewer and supported by appropriate shipping records, when beer is removed to a foreign-trade zone, and when beer is removed to the military. Section 252.144 (formerly §§ 252.143 and 252.150e) is amended.

Beer for research, development or testing. Sections 25.195–25.196 govern removals of beer without payment of tax for analysis, research, development or testing purposes. Brewers are no longer required to apply to the regional director (compliance) for permission to remove beer for research, development or testing.

In their comment, Miller objected to the requirement to mark each package of beer removed from the brewery for research, development or testing (but not for routine laboratory analysis) with the marking "Not for consumption or sale." Miller requested that beer shipped for these purposes in interplant transfers not be subject to this marking requirement.

ATF agrees that the marking requirement "Not for consumption or sale" is burdensome when placed on containers of beer removed for research, development or testing. Therefore, § 25.196 has been amended to delete this requirement. The section does, however, provide that the marks be applied when, in the opinion of the regional director (compliance), they are necessary to protect the revenue.

Beer Returned to Brewery

Section 25.211 requires a brewer to determine the actual quantity of beer in kegs or cases returned to the brewery. Section 25.211 incorporates Revenue Ruling 60–82 as modified by Revenue Ruling 60–296. Accordingly, a brewer need not use weight to determine the actual quantity of beer returned, but may use other accurate methods such as gauging by stick or by a gauging glass in the case of an accumulation tank. Brewers no longer need to notify the regional director (compliance) of these other methods to be used. In the case of kegs equipped with tamper-proof fittings, brewers are relieved of making balling and alcohol content determinations, thus incorporating ATF Ruling 75–26.

Miller requested that § 25.211 be amended to allow for the determination of quantity of returned beer by weighing cased beer contained in dumpsters, or weighing pallets containing returned kegs of beer, and subtracting the tare weight to determine the barrelage. Miller stated this procedure would represent a substantial savings over determining quantity of returned beer in individual containers.

ATF views Miller's comment as a significant savings in time for determining quantities of beer returned to the brewery. Consequently, § 25.211(a) has been amended to permit weighing accumulated cases or kegs of returned beer and determining the quantity of returned beer by subtracting tare weight of dumpsters, pallets, and packaging materials. ATF notes that since accumulated beer could be returned by different customers, brewers must be able to establish the quantity of beer returned by each customer in order to satisfy the recordkeeping provision of paragraph (c)

and to issue credit memoranda, if appropriate.

Miller also commented that the required records in § 25.211(c) seem redundant when supporting documents are kept as required by § 25.211(d). ATF disagrees. Section 25.211(c) requires certain transactions to be kept as part of required daily records—date beer returned, quantity, the name and address of person returning beer and the brewery from which removed. The quantity of beer will be used to prepare the brewer's monthly report. Section 25.211(d) requires that these records be substantiated by credit memoranda, invoices, etc. These documents are necessary to verify that the brewer is entitled to a tax offset or adjustment for the returned beer. When a brewer is required to file notice of intention to return beer to a brewery other than the one from which removed, § 25.213 requires the notice to be filed with the ATF area supervisor of the area in which the brewery is located where the beer is to be returned.

Voluntary Destruction of Beer

Subpart N contains requirements relating to the voluntary destruction of beer. The notice of destruction is now to be filed with the area supervisor of the area in which the beer is to be destroyed. Although the proposed regulations would have made this notice optional at the discretion of the regional director (compliance), ATF is continuing to require this notice of destruction as a revenue protection measure.

Beer Purchased From Another Brewer

Under Subpart O, Beer Purchased From Another Brewer, a brewer may purchase beer in kegs from another brewer which bear the marks and brands of the purchasing brewer. In accordance with 26 U.S.C. 5413, the producing brewer will taxpay the beer. The requirement that the purchasing brewer give notice to the regional director (compliance) of intent to purchase the beer has been deleted. Similarly, the requirement that the purchasing and producing brewers make separate notations in their brewer's monthly reports of the sale or purchase of such beer has been deleted. Both purchasing and producing brewers are required to keep details of the sale or purchase of such beer in accordance with § 25.302, Daily records of operations.

Section 25.231 incorporates Revenue Ruling 62–146, which prohibits a brewer from purchasing taxpaid or tax determined beer in bottles or cans bearing the marks of the purchasing brewer.

G. Heileman commented that it is unnecessary to incorporate Revenue Ruling 62–146 into § 25.231, and that adequate recordkeeping would protect the revenue. ATF, however, disagrees. Taxpaid beer bearing markings of a brewer which did not produce the beer would not identify the brewer who taxpaid the beer. Moreover, such markings would not inform the consumer as to who actually produced the beer. This ruling implements 26 U.S.C. 5413 which allows the purchase of taxpaid beer in kegs bearing the purchasing brewer's marks, but which does not authorize the purchase of taxpaid beer in bottles with the purchasing brewer's markings. Therefore, the revenue ruling has been incorporated in § 25.231.

Section 25.232 incorporates Revenue Ruling 57–25. A brewer engaging in the business of purchasing beer from another brewer must obtain a basic permit under the Federal Alcohol Administration Act as a wholesale dealer of malt beverages.

Cereal Beverages

Section 25.11 defines "cereal beverage" as a beverage produced from malt (or a substitute) either fermented or unfermented, which contains, when ready for consumption, less than ½ of 1 percent of alcohol by volume. This definition recognizes that some cereal beverages are produced without alcoholic fermentation.

Requirements governing labeling of cereal beverages appear in § 25.242. This section incorporates Revenue Ruling 57–322, which allows the designation "Near Beer" to be used on containers of cereal beverages.

Beer Concentrate

Subpart R contains regulations relating to the process of concentration of beer and the reconstitution of beer from concentrate. The definition for concentrate has been moved into § 25.11. This definition makes it clear that concentration is an authorized process in the production of beer.

Other requirements relating to concentrate are greatly simplified. Brewers producing concentrate or reconstituting beer are no longer required to register their process of concentration or reconstitution; Form 3019 is therefore eliminated. Brewers may conduct all operations relating to beer concentrate without notifying the regional director (compliance). Criteria for the production of concentrate and for the reconstitution of beer remain in § 25.262. Labeling requirements for beer produced from concentrate are retained in § 25.263.

The requirement for brewers to obtain a consent of surety in order to concentrate beer or reconstitute beer has been deleted. These processes are now covered under the brewer's bond. Requirements for the penal sum of bonds of brewers producing concentrate or reconstituting beer have been moved into § 25.93. The basis for tax liability is changed to 10 percent of the liability on beer entered into the concentration process during a calendar year.

Regulations relating to records and reports of brewers producing concentrate or reconstituting beer have been moved into Subpart U.

Form 3020, Transfer of Concentrate Produced from Beer, has been eliminated. Under § 25.264, brewers transferring concentrate may use invoices or commercial records as a record of transfer. The shipping brewer will prepare an invoice which contains the information now found on Form 3020. Upon shipment, the original invoice will be sent to the consignee brewer and a copy retained for the shipping brewer's records.

ATF regulations relating to concentrate have been adopted as proposed. In response to the notice, ATF received 2 comments relating to concentrate; in general the respondents stated the proposed regulations were adequate to cover any concentrate operations.

In Part 252, Subpart Ga, Export of concentrate made from beer, has been combined with Subpart G, Export of beer. This has been done because export procedures for both are similar. Form 3021, Export of beer concentrate, has been eliminated. Brewers exporting beer concentrate will use Form 1689, appropriately modified to record that transaction.

Pilot Brewing Plants

Subpart S contains regulations applicable to pilot brewing plants. This subpart is adopted without change from the notice.

Operation of pilot brewing plants is on a continuing basis, and an approved application will remain current as long as the operator maintains a brewer's bond.

Operators of pilot brewing plants will use the same commercial records or invoices as required under Subpart L to cover transfers of beer from a pilot brewing plant to a brewery of the same ownership. Also, operators, no longer need apply to the regional director (compliance) for authorization to transfer beer without payment of tax from a pilot brewing plant to a brewery of the same ownership. This operation is

authorized by § 25.271 which requires only that commercial records or invoices be used to document the transfer. A consent of surety is not required when transferring beer from a pilot brewing plant to a brewery since this operation is now a condition of the Brewer's Bond.

Refund or Adjustment of Tax

Regulations concerning the filing of claims for refund or credit of tax on beer lost, destroyed, rendered unmerchantable, or on which the tax was overpaid, are found in Subpart T. No comments were addressed to this subpart and it is adopted without change.

This subpart allows adjustment to the beer tax return for beer returned to a brewery, lost, destroyed, or rendered unmerchantable. Under § 25.284, brewers may simply make an adjustment, without interest, for the tax paid on beer returned to a brewery of the brewer, lost destroyed, or rendered unmerchantable. Brewers are no longer required to file claims for credit of tax and may thus receive their tax monies more quickly through use of tax adjustments. Brewers may, however, continue to file claims for refund of taxes paid and for relief from tax liability in appropriate circumstances. ATF points out that under § 25.284(e)(3), brewers may not make adjustments on their tax return for beer lost, destroyed or rendered unmerchantable if they are indemnified through insurance or otherwise in respect to the tax on the beer. Brewers must make available for inspection credit memoranda or other records documenting these transactions.

Records and Reports

Records. Section 25.291 lists all records which are required as part of the recordkeeping system at the brewery. These include transaction forms, daily records and summaries, source records used to prepare daily and summary records and monthly reports, returns, claims, and copies of applications.

Form 2051 has been eliminated as a required record. This form, Record of Brewery Operations, served as a daily summary of transactions occurring at the brewery, and was prepared using source transaction records. Anheuser-Busch commented that proposed § 25.291 was unclear as to whether daily summary records are required in addition to transaction records. The United States Brewers Assocation also commented that the maintenance of daily summary records is burdensome on small brewers, especially when required in addition to daily transaction records.

In response to these comments, § 25.291 has been clarified to require the keeping of daily records which may consist of source documents, invoices, or other commercial records. A separate government daily record is not required although the regional director (compliance) may require a specific format or arrangement when the information in records is not clearly or accurately shown. Daily summary records are required to be kept for some transactions; these are spelled out in § 25.292(b) and include beer and cereal beverage bottled and racked, taxable removals, and beer returned to the brewery. A daily summary is also required of brewing materials and beer and cereal beverage in process and on hand. ATF notes this requirement does not include a daily physical inventory of beer and cereal beverage, but rather a "book" inventory. Section 25.294 requires physical inventories on a monthly basis.

Section 25.292(a) lists items to be included in the brewer's daily records. This section requires a separate record of beer transferred for bottling and of beer transferred for racking. It also requires brewers to show separately the quantities of beer removed in bulk without payment of tax, as well as quantities removed in bottles and in kegs.

Anheuser-Busch objected to proposed § 25.292(j), which would have required daily records of beer used for laboratory samples at the brewery. They stated that numerous small samples are taken daily from various stages in the brewing process, and that it would be difficult to account for and determine the barrel equivalent of all samples tested on a given day.

ATF agrees that maintaining a record of every sample taken at the brewery is burdensome and does little to protect revenues. However, we believe that records should be kept of packaged beer used as samples at the brewery since this beer is recorded as bottled and poses more jeopardy to the revenue than bulk beer. Therefore, § 25.292(a)(10) has been revised to provide for recordkeeping of samples of packaged beer only.

A record of balling and the alcohol content of wort produced, beer and cereal beverage transferred for bottling or racking, transferred between breweries and to pilot brewing plants is required by § 25.293.

Monthly inventories are required by § 25.294. This section allows brewers to take inventories within 7 days of the end of the month for which taken.

Monthly report of brewer's operations. Form 103 has been redesignated Form 5130.9. Submission of this report will be by the 15th day of the month, rather than by the 10th as previously required.

In keeping with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and as an economy move to reduce the cost of government, ATF solicited information from brewers on alternatives to the brewer's monthly report. Suggested alternatives to monthly reporting included (1) monthly reporting but abbreviated format, (2) monthly reporting, quarterly statistics, (3) quarterly reporting, quarterly statistics, and (4) monthly or quarterly reporting for tax purposes only with statistical data compiled by and published by the private sector.

All brewer respondents—the United States Brewers Association, Anheuser-Busch, Heilemen, and Miller commented strongly in favor of retaining current monthly reporting and monthly reporting of statistics. The major reason given was that the information contained in the ATF monthly statistical releases is not available from other sources and is used extensively by the brewing industry, analysts, and suppliers to monitor industry performance. Quarterly statistics would not provide the data on a timely basis.

ATF finds that the data on Form 5130.9 is a necessary and vital part of its revenue protection mission with respect to breweries since it shows taxable and nontaxable removals, overages, shortages and losses at breweries. Monitoring of this form monthly enables ATF to pinpoint difficulties at individual breweries on a timely basis and to take appropriate steps to protect tax revenues.

Less frequent reporting by brewers would mask unusual transactions at a brewery which could have revenue impact or result in revenue loss to the Government. Transactions which could easily be detected when reported monthly, could easily be diluted when reported on a quarterly basis. Quarterly reporting would also greatly increase the quantity of source records ATF inspectors and auditors would need to examine during revenue audits at breweries. Therefore, ATF is retaining Form 5130.9 as a monthly report form.

Retention of records. The retention period for required records has been reduced to three years in § 25.300. However, the regional director (compliance) may require records to be kept for up to three additional years if the records are necessary for the

conduct of a current examination or investigation.

Reproduction of records. Under § 25.301, brewers are no longer required to obtain approval from the regional director (compliance) for the copying of records. Brewers may copy records by any process which accurately reproduces the original record and leaves a durable record capable of being preserved.

Other Issues

G. Heileman requested that the regulations be amended to allow the transfer of beer from customs custody to a brewery.

While ATF has no objection to such a proposal, we do not find this transaction authorized by 26 U.S.C. 5054(a); therefore, we cannot incorporate this suggestion into regulations.

Section 25.52 has been amended to permit regional directors (compliance) to grant emergency variances to brewers when good cause is shown, and when an emergency exists. Although Part 245 did not include this emergency provision, it exists for many other types of ATF permittees. Approval authority lies with the regional director (compliance) rather than the Director.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB). In response to Notice No. 449, ATF received comments from the United States Brewers Association, Miller Brewing Company, Anheuser-Busch Companies and G. Heileman Brewing Company concerning information collection requirements. In accordance with 5 CFR Part 1320, these comments regarding records, reports or other information collection requirements are discussed in this preamble under the headings titled Brewer's notice; Tax on Beer; Transfer of beer between breweries; Export of beer; Beer for research, development or testing; Beer Returned to Brewery; Records; and Monthly report of brewer's operations.

Transitional Rules

These rules become final on May 1, 1986. Brewers may continue to operate after that date in accordance with 27 CFR Part 25 without filing new notices or bonds. Existing variances from regulations will remain in effect unless their need is eliminated by Part 25. The following changes will occur on the effective date.

Storage of taxpaid beer. Brewers may store taxpaid beer on brewery premises as of the effective date if all conditions of § 25.24 are satisfied. Existing variances regarding such storage will become obsolete.

Measuring systems for beer. As of the effective date, brewers may employ measuring systems other than meters for measuring beer. Existing variances regarding beer meters or alternate methods for measuring beer will become obsolete.

Brewers notice. Brewers may continue to operate under existing brewers notices. Variances which are not affected by the new regulations (such as use of brewery for other purposes) will remain in effect. A brewer will be required to file a new and complete brewer's notice on Form 5130.10 the first time it is necessary to file a new or amended brewer's notice.

Brewers bonds. Existing bonds or continuation certificates remain valid until their expiration. New bonds or continuation certificates will be filed on Forms 5130.22 or 5130.23. Brewers may elect to file new bonds prior to their expiration to take advantage of reduced penal sums or for other reasons.

When determining penal sums for bonds which are in less than the maximum penal sum, brewers should use future estimated removals as the basis for detemining the penal sum. Regional directors (compliance) may, however, disapprove bonds which in their opinion, contain inadequate penal sums.

Beer for research, development or testing. Beer may be removed for research, development or testing under § 25.196 with no marking requirement, unless the regional director (compliance) notifies the brewer prior to the effective date that marking will be required.

Beer returned to the brewery. Unless the regional director (compliance) notifies the brewer prior to the effective date, beer may be returned to any brewery of the brewer under Subpart M without prior notice. The regional director (compliance) may, however, at any time require the brewer to give notice.

Adjustments to the beer tax return. Brewers shall take adjustments to the beer tax return for beer lost, destroyed, returned, etc. beginning with the first full return period following the effective date of the regulations. Brewers may, at their option, file for refund of tax.

Pilot brewing plants. Current registrations and bonds of pilot brewing plants remain in effect under Subpart S. At their option, operators of pilot brewing plants may file new bonds, continuation certificates, or registrations.

Records and reports. Form 2051 is obsolete as of the effective date of the regulations. As of that date, brewers are required to keep daily records and summary records specified in § 25.292.

Treatment of Revenue Rulings

Twenty eight IRS Revenue Rulings and ATF Rulings are either incorporated into the final regulations, or their provisions are obsolete. They include: I.R.S. Revenue Rulings 55–343, 1955–1, C.B. 568; 55–549, 1955–2 C.B. 699; 56–236, 1956–1 C.B. 705; 56–238, 1956–1 C.B. 711; 57–25, 1957–1 C.B. 610; 57–83, 1957–1 C.B. 563; 57–176, 1957–1 C.B. 609; 57–272, 1957–1 C.B. 563; 57–322, 1957–2 C.B. 930; 57–414, 1957–2 C.B. 978; 60–82, 1960–1 C.B. 711; 60–201, 1960–1 C.B. 712; 60–209, 1960–1 C.B. 733; 60–267, 1960–2 C.B. 618; 60–296, 1960–2 C.B. 516; 61–30, 1961–1 C.B. 795; 61–34, 1961–1 C.B. 822; 62–146, 1962–2 C.B. 380; 65–176, 1965–2, C.B. 514; 65–247, 1965–2 C.B. 515; 71–227, 1971–1 C.B. 470; ATF Rulings 72–3, 1973–ATF C.B. 84; 74–30, 1974–ATF C.B. 44; 75–26, 1975–ATF C.B. 53; 78–13, 1978–ATF C.B. 69; 79–6, ATF Quarterly Bulletin 1979–1, 24; 80–7, ATF Quarterly Bulletin 1980–2, 18.

Regulatory Reform

These final regulations significantly decrease paperwork on brewers, especially in the area of forms and applications. Under these regulations five of ten required brewery forms are eliminated. Four of these forms are replaced by commercial records and one is eliminated altogether. One additional form is eliminated pertaining to the export of beer concentrate under Part 252.

Under Part 245, brewers are required to file up to 28 letterhead applications or notices to conduct certain operations. Ten of these applications or notices become obsolete with these new regulations, and of the remaining notices or applications only 5 are recurring; the rest are one-time notices only. Many variances have been incorporated into the regulations by allowing brewers to conduct certain operations without special permission or without notifying the regional director (compliance).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this rule because this rule will not have a significant economic impact on a substantial number of small entities. This rule is not expected to: Have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting.

recordkeeping, or other compliance burdens on a substantial number of small entities. This rule is expected to reduce significantly the paperwork and recordkeeping burdens imposed on brewers.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document is Charles N. Bacon, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

Executive Order 12291

It has been determined that this rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of 100 million dollars or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Liquors, Reporting requirements, Surety bonds, Vessels, Warehouses, Wine.

Issuance of Regulations

Paragraph 1. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Part 7 is amended by (1) deleting the CROSS REFERENCES and the Part numbers which follow the table of sections and precede Subpart A, and (2) by adding a new section, § 7.4, containing related regulations which reads as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

* * * * *

§ 7.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.

27 CFR Part 4—Labeling and Advertising of Wine.

27 CFR Part 5—Labeling and Advertising of Distilled Spirits.

27 CFR Part 25—Beer.

27 CFR Part 200—Rules of Practice in Permit Proceedings.

27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.

PART 245—[REMOVED]

Par. 3. Part 245 is removed.

Par. 4. A new Part 25 is added which reads as follows:

PART 25—BEER

Subpart A—Scope of Regulations

Sec.
25.1 Production and removal of beer.
25.2 Territorial extent.
25.3 Forms prescribed.
25.4 Related regulations.
25.5 OMB control numbers assigned under the Paperwork Reduction Act.

Subpart B—Definitions

25.11 Meaning of terms.

Subpart C—Location and Use of Brewery

25.21 Restrictions on location.
25.22 Continuity of brewery.
25.23 Restrictions on use.
25.24 Storage of beer.

Subpart D—Construction and Equipment

Construction

25.31 Brewery buildings.

Equipment

25.35 Tanks.
25.36 Empty container storage.

Subpart E—Measurement of Beer

25.41 Measuring system required.
25.42 Testing of measuring devices.

Subpart F—Miscellaneous Provisions

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Subpart G—Qualification of a Brewery

Original Qualification

25.61 General requirements for notice.
25.62 Data for notice.
25.63 Notice of registration.
25.64 Maintenance of notice file.
25.65 Power of attorney.
25.66 Organizational documents.
25.67 Statement of process.
25.68 Description of brewery.

Changes After Original Qualification

25.71 Amended or superseding notices.
25.72 Change in proprietorship.
25.73 Change in partnership.
25.74 Change in stockholders.
25.75 Change in officers and directors.
25.76 Change in statement of process.
25.77 Change in location.
25.78 Change in premises.

Alternation of Operations

25.81 Alternation of brewery and bonded or taxpaid wine premises.

Discontinuance of Business

25.85 Notice of permanent discontinuance.

Subpart H—Bonds and Consents of Surety

25.91 Requirement for bond.
25.92 Consent of surety.
25.93 Penal sum of bond.
25.94 Strengthening bonds.
25.95 New bond.
25.96 Superseding bond.
25.97 Continuation certificate.
25.98 Surety or security.
25.99 Filings powers of attorney.

Disapproval or Termination of Bonds or Consents of Surety

25.101 Disapproval of bonds or consents of surety.
25.102 Termination of surety's liability.
25.103 Notice by surety for relief from liability under bond.
25.104 Termination of bonds.
25.105 Release of collateral security.

Subpart I—Special Taxes

Liability for Special Tax

25.111 Brewer's special tax.
25.112 Wholesaler's special tax.
25.113 Each place of business taxable.
25.114 Exemptions from dealer's special taxes.

Execution of Special Tax Returns

25.117 Special tax returns.
25.118 Data required on IRS Form 11.
25.119 Execution of IRS Form 11.

Employer Identification Numbers

25.121 Employer identification number.
25.122 Application for employer identification number.
25.123 Execution of IRS Form SS-4.

Issuance of Special Tax Stamps

25.125 Issuance of stamps.
25.126 Distribution of stamps for multiple locations.
25.127 Examination of special tax stamps.

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Subpart A—Scope of Regulations

§ 25.1 Production and removal of beer.

The regulations in this part relate to beer and cereal beverages and cover the location, construction, equipment, operations and qualifications of breweries and pilot brewing plants.

§ 25.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 25.3 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Agnus Court, Springfield, Virginia 22153.

§ 25.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 7—Labeling and Advertising of Malt Beverages.

27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.

27 CFR Part 252—Exportation of Liquors.

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 25.5 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and

Budget contained in 27 CFR Part 25 under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display, OMB control number 1512–0045.* OMB control number 1512–0045 is assigned to the following sections in 27 CFR Part 25: §§ 25.23, 25.52, 25.61, 25.62, 25.64, 25.66, 25.67, 25.68, 25.71, 25.72, 25.73, 25.74, 25.75, 25.76, 25.77, 25.78, 25.81, 25.85, 25.103, 25.114, 25.141, 25.142, 25.144, 25.158, 25.167, 25.184, 25.213, 25.222, 25.272, 25.273, 25.277, 25.282, 25.299.

(c) *Display, OMB control number 1512–0052.* OMB control number 1512–0052 is assigned to the following sections in 27 CFR Part 25: §§ 25.296(b), 25.297.

(d) *Display, OMB control number 1512–0079.* OMB control number 1512–0079 is assigned to the following section in 27 CFR Part 25: § 25.65.

(e) *Display, OMB control number 1512–0141.* OMB control number 1512–0141 is assigned to the following sections in 27 CFR Part 25: §§ 25.281, 25.282, 25.286.

(f) *Display, OMB control number 1512–0333.* OMB control number 1512–0323 is assigned to the following sections in 27 CFR Part 25: §§ 25.42, 25.142, 25.186, 25.192, 25.195, 25.196, 25.211, 25.252, 25.264, 25.276, 25.284, 25.291, 25.292, 25.293, 25.294, 25.295, 25.296(a), 25.300, 25.301.

(g) *Display, OMB control number 1512–0457.* OMB control number 1512–0457 is assigned to the following section in 27 CFR Part 25: § 25.165.

(h) *Display, OMB control number 1512–0467.* OMB control number 1512–0467 is assigned to the following sections in 27 CFR Part 25: §§ 25.122, 25.160, 25.163, 25.164, 25.165, 25.166, 25.167, 25.168, 25.175, 25.224, 25.284, 25.285, 25.298.

(i) *Display, OMB control number 1512–0472.* OMB control number 1512–0472 is assigned to the following sections in 27 CFR Part 25: §§ 25.111, 25.112, 25.113, 25.114, 25.117, 25.118, 25.119, 25.121, 25.126, 25.127, 25.131, 25.132, 25.133, 25.134.

(j) *Display, OMB control number 1512–0478.* OMB control number 1512–0478 is assigned to the following sections in 27 CFR Part 25: §§ 25.24, 25.35, 25.141, 25.142, 25.143, 25.145, 25.192, 25.196, 25.231, 25.242, 25.251, 25.263.

Subpart B—Definitions

§ 25.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms have the meanings given in this section.

Area supervisor. The supervisory officer of a Bureau of Alcohol, Tobacco and Firearms area office.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Balling. The percent by weight of dissolved solids at 60 °F. present in wort and beer, usually determined by a balling saccharometer.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing ⅛, ⅙, ¼, ⅓, or ½ barrel, a whole barrel, or other size authorized by the regional director (compliance).

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

Bottle. A bottle, can or similar container.

Bottling. The filling of bottles, cans, and similar containers.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Brewery. The land and buildings described in the Brewer's Notice, Form 5130.10, where beer is to be produced and packaged.

Brewing. The production of beer for sale.

Business day. The 24-hour cycle of operations in effect at the brewery and described on the Brewer's Notice, Form 5130.10.

Cereal beverage. A beverage, produced either wholly or in part from malt (or a substitute for malt), and either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Concentrate. Concentrate produced from beer by the removal of water under the provisions of Subpart R of this part. The processes of concentration of beer and reconstitution of beer are considered authorized processes in the production of beer.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in the context.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of the service center. A Director of an Internal Revenue Sevice Center.

District Director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds made by a brewer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, when no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this———(insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by men and, to the best of my knowledge and belief, is true, correct and complete."

Fiscal year. The period which begins October 1 and ends on the following September 30.

Gallon. The liquid measure containing 231 cubic inches.

Losses. Known quantities of beer lost due to breakage, casualty, or other unusual cause.

Package. A bottle, can, keg, barrel, or other original consumer container.

Packaging. The filling of any package.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Racking. The filling of kegs or barrels.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional director (compliance). The principal ATF regional official

responsible for administering regulations in this part.

Removed for consumption or sale. Except when used with respect to beer removed without payment of tax as authorized by law, (a) the sale and transfer of possession of beer for consumption at the brewery, or (b) any removal of beer from the brewery.

Secretary. The Secretary of the Treasury or his or her delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Shortage. An unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Treasury account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

Wort. The product of brewing before fermentation which results in beer.

Subpart C—Location and Use of Brewery

§ 25.21 Restrictions on location.

A brewery may not be established or operated in any dwelling house or on board any vessel or boat, or in any building or on any premises where the revenue will be jeopardized or the effective administration of this part will be hindered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.22 Continuity of brewery.

Brewery premises will be unbroken except that they may be separated by public passageways, streets, highways, waterways, carrier rights-of-way, or partitions. If the brewery premises are separated, the parts will abut on the dividing medium and be adjacent to each other, if the brewer has facilities for loading, or for case packing or storage which are located within reasonable proximity to the brewery, the regional director (compliance) may approve these facilities as part of the brewery if the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.23 Restrictions on use.

(a) *Use of brewery in production of beer or cereal beverage.* A brewery may be used only for the following purposes involving the production of beer or cereal beverages:

(1) For producing, packaging and storing beer, cereal beverages, vitamins, ice, malt, malt syrup, and other by-products of the brewing process, or soft drinks and other nonalcoholic beverages;

(2) For processing spent grain, carbon dioxide, and yeast; and

(3) For storing packages and supplies necessary or connected to brewery operations.

(b) *Other authorized uses.* A brewer may use a brewery for other purposes, not involving the production of beer or cereal beverage, upon approval from the Director, if the purposes:

(1) Require the use of by-products or waste from the production of beer;

(2) Utilize buildings, rooms, areas, or equipment not fully employed in the production or packaging of beer;

(3) Are reasonably necessary to realize the maximum benefit from the premises and equipment and reduce the overhead of the brewery;

(4) Are in the public interest because of emergency conditions; or

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery.

(c) *Application.* A brewer desiring to use a brewery for other purposes shall submit to the Director through the appropriate regional director (compliance), an application listing the purposes. The Director will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.24 Storage of beer.

(a) *Taxpaid beer.* Beer of a brewer's own production on which the tax has been paid or determined may not be stored in the brewery, except as provided in § 25.213. Beer produced by other brewers may be stored at the brewery under the following conditions:

(1) Taxpaid beer will be segregated in such a manner as to preclude mixing with nontaxpaid beer;

(2) If required by Part 1 of this chapter, the brewer shall have a wholesalers or importers basic permit under the Federal Alcohol Administration Act, and keep records of the taxpaid beer as a wholesaler or importer under Part 194 of this chapter.

(3) Taxpaid beer may be stored in packages;

(4) Taxpaid beer may not be relabeled;

(5) Taxpaid beer may not be shown on required brewery records;

(6) The brewer shall purchase a special tax stamp as a wholesaler, if required by Part 194 of this chapter; and

(7) The regional director (compliance) may require physical segregation of taxpaid beer, or marking to show the status of taxpaid beer, if necessary to protect the revenue.

(b) *Untaxpaid beer.* Packaged beer on which tax has not been paid or determined may be stored in any suitable location in the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart D—Construction and Equipment

Construction

§ 25.31 Brewery buildings.

Brewery buildings shall be arranged and constructed to afford adequate protection to the revenue and to facilitate inspection by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

Equipment

§ 25.35 Tanks.

Each stationary tank, vat, cask or other container used, or intended for use, as a receptacle for wort, beer or concentrate produced from beer shall:

(a) Be durably marked with a serial number and capacity; and

(b) Be equipped with a suitable measuring device. The brewer may provide meters or other suitable portable devices for measuring contents of tanks or containers in lieu of providing each tank or container with a measuring device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 25.36 Empty container storage.

Empty barrels, kegs, bottles, other containers, or other supplies stored in the brewery will be segregated from filled containers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart E—Measurement of Beer

§ 25.41 Measuring system required.

The brewer shall accurately and reliably measure the quantity of beer transferred from the brewery cellars for bottling and for racking. The brewer may use a measuring device, such as a meter or gauge glass, or any other suitable method.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

25.42 Testing of measuring devices.

(a) *General requirements.* If a measuring device such as a meter or gauge glass is used to measure beer, the

brewer shall periodically test the measuring device and adjust or repair it, if necessary. The brewer shall keep records of tests available for inspection by ATF officers. Records of tests will include:

(1) Date of test;

(2) Identity of meter or measuring device;

(3) Result of test; and

(4) Corrective action taken, if necessary.

(b) *Requirements for beer meters.* The allowable variation for beer meters as established by testing may not exceed ±0.5 percent. If a meter test discloses an error in excess of the allowable variation, the brewer shall immediately adjust or repair the meter. Adjustments will reduce the error to as near zero as practicable.

(c) *Authority to require tests.* If the regional director (compliance) has reason to believe that the accuracy or reliability of a measuring device is not being properly maintained, he or she may require the brewer to test the measuring device and, if necessary, adjust or repair the measuring device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Subpart F—Miscellaneous Provisions

§ 25.51 ATF officer's right of entry and examination.

An ATF officer may enter, during normal business hours, a brewery or other place where beer is stored and may, when the premises are open at other times, enter those premises in the performance of official duties. ATF officers shall make inspections as the regional director (compliance) deems necessary to determine that operations are conducted in compliance with the law and this part. The owner of any building or place where beer is produced, made, or kept, or person having charge over such premises, who refuses to admit an ATF officer acting under 26 U.S.C. 7606, or who refuses to permit an ATF officer to examine beer shall, for each refusal, forfeit $500.

(Act of August 16, 1954, 68A Stat. 872, 903, as amended (26 U.S.C. 7342, 7606))

§ 25.52 Variations from requirements.

(a) *Exceptions to construction, equipment and methods of operations.* (1) *General.* The Director may approve details of construction, equipment or methods of operations, in lieu of those specified in this part. The brewer shall show that it is impracticable to conform to the prescribed specification, and that the proposed variance: (i) will afford the protection to the revenue intended by the specifications in this part; (ii) will not hinder the effective administration of this part, and (iii) is not contrary to any provision of law.

(2) *Application.* A brewer who proposes to employ methods of operations or construction or equipment other than as provided in this part shall submit an application to the regional director (compliance). The application will describe the proposed variation and state the need for it. The brewer shall submit drawings or photographs if necessary to describe the proposed variation.

(3) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The brewer shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(4) *Exceptions.* The Director may not authorize an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(5) *Conditions of approval.* A brewer may not employ an alternate method or procedure until the Director has approved its use. The brewer shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements.*

(1) *Application.* When an emergency exists, a brewer may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The brewer shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval.* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A brewer may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(c) *Automatic termination of approval.* If the brewer fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the brewer is required to comply with prescribed requirements of regulations.

(d) *Withdrawal of approval.* The Director may withdraw approval of an alternate method or procedure, approved under paragraph (a) of this section, if the Director finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval. The regional director (compliance) may withdraw approval of an emergency variation from requirements, approved under paragraph (b) of this section, if the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended, 1396, as amended (26 U.S.C. 5552, 5556))

Subpart G—Qualification of a Brewery

Original Qualification

§ 25.61 General requirements for notice.

(a) *Establishment.* Operations as a brewer may be conducted only by a person who has given notice as a brewer under this subpart. A person may not commence the business of a brewer until the regional director (compliance) approves the brewery and the brewer's notice, including all documents made part of that notice.

(b) *Brewer's Notice, Form 5130.10.* Each person shall, before commencing business as a brewer, give notice on Form 5130.10 to the regional director (compliance) of the region in which the brewery is located. Each person continuing business as a brewer as provided in § 25.71 shall give notice on Form 5130.10 to the regional director (compliance). Each notice will be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the notice will be made part of the notice.

(c) *Additional information.* The regional director (compliance) may at any time require the brewer to furnish, as part of the notice, additional information which is necessary to protect and insure collection of the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.62 Data for Notice.

(a) *Required information.* The brewer shall prepare the notice on Form 5130.10 and shall include the following information: (1) Serial number.

(2) Purpose for which filed.

(3) Name and principal business address of the brewer and the location of the brewery if different from the business address.

(4) Statement of the type of business organization and of the persons interested in the business, supported by the information listed in § 25.66.

(5) Description of brewery, as specified in § 25.68.

(b) A list of trade names which the brewer intends to use in doing business or in packaging beer.

(7) A statement of process for fermented beverages if required by § 25.67.

(8) The name and address of the owner of the land or buildings comprising the brewery, and of any mortgagee or other encumbrancer of the land or buildings comprising the brewery.

(9) The 24-hour cycle of operations at the brewery which is to be the brewer's business day.

(10) The process by which the brewer intends to render beer unfit for beverage use when beer is to be removed for use in manufacturing under §§ 25.191–25.192.

(11) Statement showing ownership or controlling interests in other breweries which will establish eligibility for the transfer of beer without payment of tax between breweries of the same ownership, as authorized in § 25.181.

(12) The date of the notice and the name and signature of the brewer or person authorized to sign on behalf of the brewer.

(b) *Incorporation by reference.* If any of the information required by paragraph (a)(4) of this section is on file with the regional director (compliance) of any ATF region in connection with the qualification of any other premises operated by the brewer, that information, if accurate and complete, may be incorporated into the brewer's notice by reference.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.63 Notice of registration.

The Brewer's Notice, Form 5130.10, when approved by the regional director (compliance), will constitute the notice of registration of the brewery. The regional director (compliance) will not approve the notice until the notice and all incorporated documents are complete, accurate, and in compliance with the requirements of this part. A person may not operate a brewery until the notice required by this subpart has been approved by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.64 Maintenance of notice file.

The brewer shall maintain the approved Brewer's Notice, Form 5130.10, and all incorporated documents at the brewery premises, in complete and current condition, readily available for inspection by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.65 Power of attorney.

The brewer shall execute and file with the regional director (compliance) a Form 1534 (5000.8) for each person authorized to sign or act on behalf on the brewer. The Form 1534 (5000.8) is not required for persons whose authority is furnished in the Brewer's Notice, Form 5130.10.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.66 Organizational documents.

The supporting information required by paragraph (a)(4) of § 25.62 includes, as applicable, the following:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation;

(2) List of directors and officers, showing their names and addresses;

(3) Extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation; and

(4) Statement showing the number of shares of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* Copy of the articles of partnership or association, if any, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of all persons having 10 percent or more stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another person. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance); or

(2) In the case of an individual owner or partnership, the name and address of each person holding an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section, and additional documents such as the articles of incorporation, bylaws, and State certificates authorizing the brewer to operate in the State where located (if other than the State in which the brewery is incorporated) shall be made available to any ATF officer upon request. In the case of multiplant brewers, these documents may be made available at the brewer's home brewery. Each brewer's notice filed by multiplant brewers will state the location where these corporate documents may be inspected.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.67 Statement of process.

(a) The Brewer's Notice, Form 5130.10 will contain a statement of process for any fermented beverage which the brewer intends to produce and market under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor."

(b) The statement of process will give the name or designation of the product, the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product.

(c) A statement of process for any fermented beverage (other than sake or cereal beverage) will not be approved unless the base product has the characteristics of beer as defined in § 25.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

§ 25.68 Description of brewery.

(a) The Brewer's Notice, Form 5130.10, will include a description of (1) each tract of land comprising the brewery, and (2) a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used.

(b) The description of the land will be in sufficient detail to enable ATF officers to determine the boundaries of the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Changes After Original Qualification

§ 25.71 Amended or superseding notices.

(a) *Requirement for amended notice.* (1) When there is a change with respect to the information shown in the Brewer's Notice, Form 5130.10, the brewer shall within 30 days of the change (except as otherwise provided in this subpart) submit to the regional director (compliance) an amended notice setting forth the new information. Changed notices will be submitted in skeleton form, with unchanged items marked "No change since Form 5130.10, Serial No. ———."

(2) The regional director (compliance) may require immediate filing of an amended Form 5130.10 if the accuracy of existing documents has been affected by any change.

(b) *Requirement for superseding notice.* (1) The regional director (compliance) may require a brewer to file a new and complete notice, superseding those previously filed, in conjunction with the filing of a new bond. This superseding notice will become effective on the date of the brewer's bond or on the date of the brewer's bond continuation certificate.

(2) If the information required by § 25.62(a) (4), (5), (6), (7), (9), and (10) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.72 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the outgoing brewer shall comply with the requirements of § 25.85. The successor brewer shall, before beginning operations, qualify in the same manner as the proprietor of a new brewery. The successor brewer shall file a new notice and bond in his or her own name. Beer on hand may be transferred without payment of tax to the successor brewer and will be accounted for by that brewer.

(b) *Fiduciary.* (1) If the successor to the brewer is an administrator, executor, receiver, trustee, assignee or other fiduciary, the fiduciary may in lieu of filing a new notice and bond, file an amended notice and furnish a consent of surety extending the terms of the predecessor's bond or continuation certificate.

(2) The fiduciary shall furnish the regional director (compliance) a certified copy of the court order or other document showing qualification as fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the same as the date of the order, or the date therein specified for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date of the appointment will be the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.73 Change in partnership.

(a) *New notice required.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, constitutes a change in proprietorship. Unless exempted by paragraph (b) of this section, the death, bankruptcy or adjudicated insolvency of one or more partners results in a dissolution of the partnership and a change in proprietorship. The successor shall qualify the brewery in the same manner as the propietor of a new brewery.

(b) *Continuing partnership.* A surviving partner or partners may continue to operate the brewery for purposes of liquidation and settlement under the following conditions:

(1) Under the laws of the State where the partnership was formed, the partnership is not terminated on death or insolvency of a partner(s); and

(2) Under the laws of the State where the partnership was formed, the surviving partner(s) has the exclusive right to control and possession of the partnership assets for the purpose of liquidation and settlement; and

(3) A consent of surety if filed in which the surety and the surviving partner(s) agree to remain liable on the bond.

(c) *Settlement of partnership.* If the surviving partner(s) acquires the business on completion of the settlement of the partnership, that partner(s) shall qualify in his or her own name from the date of acquisition and give a new brewer's notice on Form 5130.10 and a new bond on Form 5130.22.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.74 Change in stockholders.

Changes in the list of stockholders furnished under the provisions of § 25.66(c)(1) shall be submitted annually by the brewer on July 1 or on any other date approved by the regional director (compliance). When the sale or transfer of capital stock results in a change in the control or management of the business, notification of the change will be made within 30 days in accordance with § 25.71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.75 Change in officers and directors.

When there is any change in the list of officers or directors furnished under the provisions of § 25.66(a)(4), the brewer shall submit, within 30 days of the change, an amended notice on Form 5130.10. If the brewer has shown to the satisfaction of the regional director (compliance) that certain corporate officers listed on the original notice have no responsibilities in connection with the operations covered by the notice, the regional director (compliance) may waive the requirements for submitting applications for amended notice to cover changes of those corporate officers. In the case of multiplant brewers, new brewers notices need not be filed for those breweries in which the lists of officers and directors are incorporated by reference in their brewer's notices under § 25.62(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.62(a)(7) for any fermented beverage produced and marketed under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor," the brewer shall submit an amended notice and obtain approval of the notice prior to using the changed statement of process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.77 Change in location.

When there is a change in the location of the brewery, the brewer shall file an amended Form 5130.10, and a new bond, Form 5130.22, or a consent of surety, Form 1533 (5000.18), in accordance with § 25.91, extending the terms of the bond or continuation certificate to cover operations at the new location. The brewer may not begin operations at the new location until the regional director (compliance) approves the required documents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.78 Change in premises.

Except as authorized in § 25.81, when the brewery is to be extended or curtailed, the brewer shall file with the regional director (compliance) an amended Form 5130.10. The additional facilities covered by the extension may not be used for the proposed purposes, and the portion to be curtailed may not be used for other than the previously

approved purposes, prior to approval of Form 5130.10

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Alternation of Operations

§ 25.81 Alternation of brewery and bonded or taxpaid wine premises.

(a) *General.* A brewer operating a contiguous bonded winery or taxpaid wine bottling house may, as provided in this section, alternate the use of each premises by extension or curtailment.

(b) *Qualifying documents.* The brewer shall file with the regional director (compliance) and receive approval of the following qualifying documents:

(1) Form 698 (5120.25) or 2975 (5140.2) and Form 5130.10 to cover the curtailment and extension of the premises to be alternated.

(2) Special diagrams, in duplicate, delineating the brewery premises and the bonded or taxpaid wine premises as they will exist both during extension and curtailment. The diagrams will clearly depict wall areas, buildings, floors, rooms, equipment and pipelines which are to be subject to alternation in their relative operating sequence.

(3) Evidence of existing bond, consent of surety, continuation certificate, or a new bond to cover the proposed alternation of premises.

(c) *Brewer's responsibility.* After approval of qualifying documents, the brewer may alternate the designated premises pursuant to a letterhead notice submitted to the regional director (compliance) through the ATF area supervisor. The notice will contain the information required by paragraph (d) of this section. Prior to the effective date and hour of the alternation, the brewer shall (1) remove all beer on brewery premises to be alternated to bonded or taxpaid wine premises, or (2) remove all wine from bonded to taxpaid wine premises to be alternated to brewery premises.

(d) *Information for notice.* The notice required by paragraph (c) of this section will contain the following information:

(1) Plant name and address;
(2) Serial number;
(3) Effective date and hour of proposed change;
(4) Whether premises are to be curtailed or extended;
(5) Purpose of curtailment or extension;
(6) Identification of the special diagram depicting the premises as they exist when curtailed or extended; and
(7) Date of execution and signature of brewer.

(e) *Separation of premises.* The regional director (compliance) may require that the portion of brewery or bonded or taxpaid wine premises extended or curtailed under this section be separated, in a manner satisfactory to the regional director (compliance), from the remaining portion of the brewery or bonded or taxpaid premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended, 1389, as amended, 1390, as amended (26 U.S.C. 5401, 5411, 5415))

Discontinuance of Business

§ 25.85 Notice of permanent discontinuance.

When a brewer desires to discontinue business premanently, he or she shall file with the regional director (compliance) a notice on Form 5130.10. The brewer shall state the purpose of the notice as "Discontinuance of business" and give the date of the discontinuance. When all beer has been lawfully disposed of, the regional director (compliance) will approve the Form 5130.10 and return a copy to the brewer. The brewer shall file a report on Form 5130.9 showing no beer or cereal beverage on hand and marked "Final Report."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Subpart H—Bonds and Consents of Surety

§ 25.91 Requirement for bond.

(a) *General.* Every person intending to commence the business of a brewer shall file a bond, Form 5130.22, as prescribed in this subpart, covering operations at the brewery, at the time of filing the original Brewer's Notice, Form 5130.10. Every brewer intending to continue the business of a brewer shall, once every 4 years, or as provided in § 25.95, execute and file a new bond, or continuation certificate as provided in § 25.97, with the regional director (compliance).

(b) *Conditions of the bond.* The Brewer's Bond, Form 5130.22, will be conditioned upon the brewer faithfully complying with all provisions of law and regulations relating to the activities covered by the bond, and upon paying all taxes imposed by 26 U.S.C. Chapter 51 and all interest and penalties incurred or fines imposed for violations of those provisions.

(c) *Additional information.* The regional director (compliance) shall require, in connection with any brewer's bond, a statement executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 25.101(a)(1), or has been convicted of any offense set forth in § 25.101(a)(2). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding the conviction or compromise.

(d) *Bond required before beginning business.* A person may not begin business or continue business as a brewer until first receiving notice that the regional director (compliance) has approved the bond, continuation certificate, or consent of surety, as required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401); sec. 4(a), Pub. L. 91–673, 84 Stat. 2057 (26 U.S.C. 5417))

§ 25.92 Consent of surety.

A brewer may change the terms of any bond filed under this part by filing a consent of surety. Consents of surety will be executed on Form 1533 (5000.18) by the brewer and the surety on the bond, with the same formality and proof of authorization as required for the execution of a bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.93 Penal sum of bond.

(a) *Calculation.* The penal sum of the brewer's bond will be equal to 10 percent of the maximum amount of tax, calculated at the rates prescribed by law, which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(1) Removed for transfer to the brewery from other breweries owned by the same brewer;

(2) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(3) Removed without payment of tax for use in research, development, or testing; and

(4) Removed for consumption or sale.

(b) *Concentrate.* A brewer who concentrates beer under Subpart R of this part shall calculate the penal sum of the bond by computing 10 percent of the amount of tax at the rates prescribed by law, on the maximum quantity of beer used in the production of concentrate during a calendar year. The brewer shall add this amount to the penal sum calculated under paragraph (a) of this section to determine the total penal sum of the brewer's bond.

(c) *Maximum and minimum penal sums.* The maximum penal sum of the bond (or total penal sum if original and strengthening bonds are filed) is not to exceed $150,000 when the tax on beer is to be prepaid, or $500,000 when the tax is to be deferred as provided in § 25.164.

The minimum penal sum of a bond is $1,000.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.94 Strengthening bonds.

(a) *Requirement.* When the penal sum of the brewer's bond (calculated as provided in § 25.93) in effect is not sufficient, the principal may prepay the tax on beer as provided in Subpart K of this part, or give a strengthening bond in sufficient penal sum if the surety is the same as on the bond in effect. If the surety is not the same, a new bond covering the entire liability is required.

(b) *Restrictions.* A strengthening bond may not in any way release a former bond or limit a bond to less than the full penal sum.

(c) *Date of execution.* Strengthening bonds will show the current date of execution and their effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.95 New bond.

The regional director (compliance) may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the regional director (compliance), the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the regional director (compliance) after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding bonds will show the current date of execution and their effective date.

§ 25.97 Continuation certificate.

If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force for a succeeding period of not less than 4 years from the expiration date of the bond or continuation certificate, the brewer may submit, in lieu of a new bond, a Brewer's Bond Continuation Certificate on Form 5130.23, executed under the penalties of perjury, by the brewer and the surety attesting to continuation of the bond. Each continuation certificate will constitute a bond and all provisions of law and regulations applicable to bonds on Form 5130.22 given under this part, including the disapproval of bonds, are applicable to continuation certificates.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.98 Surety or security.

(a) *Bond coverage.* Bonds required by this part will be given with corporate surety or collateral security.

(b) *Corporate surety.* Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations set forth in the current revision of Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies.

(c) *Revisions of Circular No. 570.* Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(d) *More than one corporate surety.* A bond may be executed by two or more corporate sureties. Each corporate surety may limit its liability in terms on the face of the bond in a specified amount. This amount may not exceed the limitations set forth for corporate security by the Secretary which are set forth in the current revision of Treasury Department Circular No. 570. The sum of the liabilities for the sureties will equal the required penal sum of the bond.

(e) *Deposit of collateral securities in lieu of corporate surety.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate surety in accordance with 31 CFR Part 225.

(96 Stat. 1068, 1085 (31 U.S.C. 9304–9308); sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.99 Filing powers of attorney.

Each bond, continuation certificate, and each consent of surety will be accompanied by a power of attorney authorizing the agent or officer to execute the document. The power of attorney will be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it will be accompanied by a certificate of its validity.

(96 Stat. 1068, 1085 (31 U.S.C. 9304–9308))

Disapproval or Termination Bonds or Consents of Surety

§ 25.101 Disapproval of bonds or consents of surety.

(a) *Reasons for disapproval.* The regional director (compliance) may disapprove a bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond or consent of surety, or if any of the above entities owning, controlling or actively participating in the management of a business giving a bond as a brewer, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of law of the United States if it related to internal revenue or customs taxation of distilled spirits, wines or beer, or if the offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise; or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

(b) *Appeal of disapproval.* If the regional director (compliance) disapproves a bond or consent of surety, the person giving the bond may appeal the disapproval to the Director, who will grant a hearing in the matter if requested by the applicant or brewer. The decision of the Director shall be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after: (a) the effective date of a superseding bond; (b) the date of approval of the discontinuance of business of the brewer; or (c) following the giving of notice by the surety as provided in § 25.103.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.103 Notice by surety for relief from liability under bond.

A surety may, at any time, in writing, notify the principal and the regional director (compliance) that the surety desires after a specified date (not less than 60 days after the date of service on the principal) to be relieved of any liability under the bond which is incurred by the principal after the date named in the notice. The surety shall include proof of service of the notice on the principal with the notice filed with the regional director (compliance). The notice will become effective on the date named, unless the surety withdraws the notice, in writing. The surety on the bond remains liable under the bond with respect to any liability incurred by the principal while the bond is in effect.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.104 Termination of bonds.

Brewer's bonds may be terminated as to liability for future removals or receipts (a) pursuant to application of the surety as provided in § 25.103, (b) on approval of a superseding bond, or (c) on notification by the principal that the business has been discontinued. On termination of the surety's liability under a bond, the regional director (compliance) will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 Release of collateral security.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part will be released in accordance with 31 CFR Part 225. When the regional director (compliance) determines there is no outstanding liability against the bond and that it is no longer necessary to hold the security, he or she shall fix the date or dates on which a part or all of the security will be released. At any time prior to the release of the security, the regional director (compliance) may, for proper cause, extend the date of release of the security for an additional length of time as may be appropriate.

(31 U.S.C. 9301, 9303)

Subpart I—Special Taxes

Liability for Special Tax

§ 25.111 Brewer's special tax.

Brewers are required to pay, on or before the first day of July in each year, or before commencing operations, a special tax at the rate imposed by 26 U.S.C. 5091. Special taxes are imposed as of the first day of July in each year, or on commencing the business of a brewer. In the former case, special tax is computed for the entire year; in the latter case, special tax is computed from the first day of the month which liability is incurred until the 30th day of June following.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1339, 1346, as amended (26 U.S.C. 5091, 5142))

§ 25.112 Wholesaler's special tax.

Brewers who purchase beer from other brewers for resale, including brewers purchasing beer in their own kegs or barrels, may be liable for special tax as wholesale dealers in beer under 26 U.S.C. 5111. Special taxes are imposed as of the first day of July in each year or on commencing the business of a wholesaler.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1346, as amended (26 U.S.C. 5111, 5142))

§ 25.113 Each place of business taxable.

(a) *General.* A brewer incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(b) *Exception for contiguous areas.* A brewer will not incur additional special tax liability for sales of beer made at a location other than on brewery premises described on the brewer's notice, Form 5130.10, if the location where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.114 Exemptions from dealer's special taxes.

(a) *Brewer.* A brewer is not required to pay special tax as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a taxpaid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax for each brewery. The brewer may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the brewery.

(b) *Wholesale dealer.* A wholesale dealer in beer who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

Execution of Special Tax Returns

§ 25.117 Special tax returns.

(a) *General.* Each person required to pay special tax shall prepare a return on IRS Form 11. The return will be filed, with payment of tax, with the director of the service center serving the internal revenue district in which the taxpayer's business is located, or by hand carrying in accordance with paragraph (c) of this section.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at two or more locations shall: (1) File on special tax return, IRS Form 11 (prepared in the manner prescribed in §25.118), with payment of tax to cover all locations. The return with tax will be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address, employer identification number, class of tax, and period covered by the return. The list will show, by States, the name address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list will be attached to the IRS Form 11, as a part of the return, and the copy will be retained by the taxpayer for a period of not less than two years.

(c) *Hand carried returns.* If the return is filed by hand carrying, the taxpayer shall file it with the district director for the district in which the taxpayer's business is located or in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located.

(Act of August 16, 1954, 68A Stat. 752, as amended (26 U.S.C. 6091); sec. 201, Pub. L. 85–859, 72 Stat. 1346, as amended (26 U.S.C. 5142))

§ 25.118 Data required on IRS Form 11.

Each return on IRS Form 11 will be prepared in accordance with the instructions on the form or issued in

respect to the form. Each return will include the following:

(a) If the taxpayer is an individual or a corporation, the true name of the individual or corporation;

(b) If the taxpayer is a partnership, the true name of every person comprising the partnership;

(c) The employer identification number (see §§ 25.121–25.123);

(d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description, in addition to the post office address. In the case of one return for two or more locations as provided in § 25.117, the location to be shown on IRS Form 11 will be the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer);

(e) The classes of tax; and

(f) All other information required by the form.

(Act of August 16, 1954, 68A Stat. 732, as amended, 845, as amended (26 U.S.C. 6011, 7011); sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 25.119 Execution of IRS Form 11.

(a) *Ordinary returns.* The return of an individual proprietor will be signed by the individual. The return of a partnership will be signed by any of the partners. The return of a corporation will be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature will be preceded by the name of the principal, followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed with the internal revenue office with which IRS Form 11 is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* IRS Form 11 will contain or be verified by a written declaration that it has been executed under penalties of perjury.

(Act of August 16, 1954, 68A Stat. 748, as amended, 749, as amended, 757, as amended, 845, as amended (26 U.S.C. 6061, 6065, 6151, 7011))

Employer Identification Numbers

§ 25.121 Employer identification number.

The employer identification number defined in 26 CFR 301.7701–12 of the taxpayer who has been assigned the number will be shown on each IRS Form 11, including amended IRS Form 11, filed under this subpart. Failure of the taxpayer to include the employer identification number on IRS Form 11 may result in the imposition of the penalty specified in 26 CFR 301.6676–1.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

§ 25.122 Application for employer identification number.

Each taxpayer who files a return or IRS Form 11 or ATF Form 5000.24 shall file IRS Form SS–4 to apply for an employer identification number. The taxpayer shall apply for and be assigned one employer identification number regardless of the number of places of business for which the taxpayer is required to file a return. If a taxpayer has filed the first return, IRS Form 11 or ATF Form 5000.24, before applying for or being assigned an employer identification number, he or she shall apply within 7 days of the filing of the return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 25.123 Execution of IRS Form SS–4.

(a) *Preparation.* The taxpayer shall prepare IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form. The taxpayer shall file IRS Form SS–4 with the district director of any internal revenue district in which the taxpayer operates a business subject to special tax, unless the instructions on IRS Form SS–4 require it to be filed with the director of the service center serving the internal revenue district.

(b) *Signature.* The application will be signed by:

(1) The individual, if the taxpayer is an individual;

(2) The president, vice president, or other principal officer, if the taxpayer is a corporation;

(3) A responsible and authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or

(4) The fiduciary, if the taxpayer is a trust or estate.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

Issuance of Special Tax Stamps

§ 25.125 Issuance of stamps.

Upon filing a properly executed return of IRS Form 11, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to IRS Form 11 required by § 25.117(b), but showing as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 25.126 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to IRS Form 11. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 25.127 Examination of special tax stamps.

All stamps denoting payment of special tax will be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(Act of August 16, 1954 68A Stat. 831, as amended (26 U.S.C. 6806); sec. 201, Pub. L. 85–859, 72 Stat. 1348, as amended (26 U.S.C. 5146))

Changes in Special Tax Stamps

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, the brewer shall, within 30 days after the change, file with the director of the service center who issued the stamp an additional return on IRS Form 11 covering the new corporate or firm name, or trade names. The brewer shall forward the special tax stamp or stamps to the director of the service center who issued the stamp for appropriate notation with respect to the change in name.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011))

§ 25.132 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the successor shall obtain the required special tax stamps.

(b) *Exemption for certain successors.* Persons having the right of succession provided for in § 25.133 may carry on the business for the remainder of the period for which the special tax was paid, if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on IRS Form 11 with the director of the service center who issued the stamp, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.133 Persons having right of succession.

Under the conditions indicated in § 25.132, the right of succession will pass to certain persons in the following cases:

(a) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(b) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(c) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(d) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (25 U.S.C. 5143))

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall within 30 days after the change file with the director of the service center who issued the stamp an amended return on IRS Form 11 covering the new location. The brewer shall forward the special tax stamp or stamps to the director of the service center for endorsement of the change in location. If the brewer does not file the amended return within 30 days, the brewer is required to obtain a new special tax stamp.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

Subpart J—Marks, Brands, and Labels

§ 25.141 Barrels and kegs.

(a) *General requirements.* The brewer's name or trade name and the place of production (city and, if necessary for identification, State) shall be permanently marked on each barrel or keg. If the place of production is clearly shown on the bung or on the tap cover, or on a label securely affixed to each barrel or keg, the place of production need not be permanently marked on each barrel or keg. No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned and operated by the same person, firm or corporation (as defined in § 25.181), the place of production may be shown as provided in paragraph (a) of this section. If two or more brewery locations are shown, the place of production (including street address if two or more breweries are located in the same city) will be shown on the bung or on the tap cover or on a label securely affixed to each barrel or keg.

(2) The brewer may use a coding system on the bung or tap cover or label which will identify the place of actual production and will permit ATF officers to determine the place of production of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

(c) *Label approval required.* Labels or tap covers used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.142 Bottles.

(a) *Label requirements.* Each bottle of beer shall show by label or otherwise the name or trade name of the brewer, the net contents of the bottle, the nature of the product such as beer, ale, porter, stout, etc., and the place of production (city and, when necessary for identification, State). No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production may be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations. If the location of two or more breweries is shown on the label, the place of production may be indicated either by printing, coding or other markings on the label, bottle, crown or lid.

(2) The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

(c) *Distinctive names.* If the brewer's name, trade name or brand name includes the name of a city which is not the place where the beer was produced, the Director may require the brewer to state the actual place of production on the label.

(d) *Tolerances.* The statement of net contents shall indicate exactly the volume of beer within the bottle except for variations in measuring as may occur in filling conducted in compliance with good commercial practice. The barrel equivalent of bottles filled during a consecutive three month period, calculated on the basis of the brewer's fill test records, may not vary more than 0.5 percent from the barrel equivalent of bottles filled during the same period, calculated on the basis of the stated net contents of the bottles. The brewer is liable for the tax on the entire amount of beer removed, without benefit of tolerance, when the fill of bottles and cans exceeds the tolerance for the three month period, or when filling is not conducted in compliance with good commercial practice.

(e) *Label approval required.* Labels used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(f) *Short-fill bottles.* A brewer may dispose of taxpaid short-fill bottles of beer to employees for their use but not for resale. These bottles need not be labeled, but if labeled they need not show an accurate statement of net contents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.143 Cases.

(a) *Brewer's name.* The brewer's name or trade name will be shown on each case or other shipping container of bottled beer. A brewer may use unmarked cases to hold:

(1) Cartons of beer, if the visible portion of the cartons shows the required name; or

(2) Bottles or cans with plastic carriers, if the visible portion of the bottles or cans shows the required name.

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in § 25.181). If only one address is shown, it will be that of the producing brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.144 Rebranding barrels and kegs.

(a) A brewer may not use a barrel or keg which bears the name of more than one brewer, and except as provided in § 25.231, may not use a barrel or keg bearing the name of a brewer other than the producing brewer.

(b) A brewer who purchases or otherwise obtains barrels or kegs from another brewer shall permanently remove or durably cover the original marks and brands after notifying the regional director (compliance) of the proposed action. A brewer may use the barrels or kegs obtained without removing or covering the original marks and brands if the brewer: (1) Adopts a trade name substantially identical to the name appearing on the barrels or kegs; or (2) succeeds to a brewer who has discontinued business, in which case the brewer may add marks or brands, in accordance with § 25.141, which indicate ownership.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.145 Tanks, vehicles, and vessels.

(a) Each brewer who transfers beer to another brewery of the same ownership (as defined in § 25.181), or who exports beer without payment of tax, as provided in § 25.203, shall plainly and durably mark each tank, tank car, tank truck, tank ship, barge, or deep tank of a vessel in accordance with paragraph (b) of this section. These marks may be placed on a label securely affixed to the route board of the container.

(b) The brewer shall mark each container with—

(1) The designation "Beer";

(2) The brewer's name;

(3) The address of the brewery from which removed;

(4) The address of the brewery to which transferred or the marks required for exportation in Part 252 of this chapter, as applicable;

(5) The date of shipment; and

(6) The quantity, expressed in barrels.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5053, 5414))

Subpart K—Tax on Beer

Liability for Tax

§ 25.151 Rate of tax.

All beer, brewed or produced, and removed for consumption or sale, is subject to the tax prescribed by 26 U.S.C. 5051, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel as authorized in §25.156.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052))

§ 25.152 Reduced rate of tax for certain brewers.

(a) *General.* Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer:

(1) Shall brew or produce the beer at a qualified brewery in the United States;

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a "controlled group" of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563–1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563–3, may be acquired through:

(A) An option to purchase stock;

(B) Attribution from partnerships;

(C) Attribution from estate or trusts;

(D) Attribution from corporations; or

(E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer's daily records and reported in the monthly report, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers shall include the combined production of beer by all member brewers when determining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with Subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption or sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

Determination of Tax

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the Director determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the Director determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156 will be treated as such for purposes of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended, 1390, as amended (26 U.S.C. 5412, 5416))

§ 25.156 Determination of tax on keg beer.

In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are halves, thirds, quarters, sixths, and eighths, and beer may be removed only in kegs rated at those capacities. If any barrel or authorized fractional part of a barrel contains a quantity of beer more than two percent in excess of its rated capacity, tax will

be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg. The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.157 Determination of tax on bottled beer.

The quantities of bottled beer removed subject to tax shall be computed to 5 decimal places in accordance with the table and instructions in § 25.158. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.158 Tax computations for bottled beer.

Barrel equivalents for various case sizes are as follows:

Number of bottles per case	Fluid contents (ounces) of each bottle	Barrel equivalent
1	128	0.03226
1	288	.07258
4	64	.06452
6	64	.09677
6	[1]2	.10226
12	7	.02117
12	8	.02419
12	11	.03327
12	12	.03629
12	14	.04234
12	24	.07258
12	30	.09073
12	32	.09677
12	[1]1	.10226
12	40	.12097
24	7	.04234
24	8	.04839
24	10	.06048
24	11	.06653
24	11½	.06956
24	12	.07258
24	14	.08468
24	16	.09677
24	[1] ½	.10226
32	7	.05645
35	7	.06174
36	7	.06351
36	8	.07258
40	7	.07056
48	7	.08468
48	10	.12097
48	12	.14516
50	12	.15121

[1] Liter.

If beer is to be removed in cases or bottles of sizes other than those listed in the above table, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.159 Time of tax determination and payment; offsets.

(a) *Time and payment.* The tax on beer will be determined at the time of its removal for consumption or sale, and will be paid by return as provided in this part.

(b) *Offsets.* During any business day, the quantity of beer returned to the same brewery from which removed is to be taken as an offset against or deducted from the total quantity of beer removed for consumption or sale from that brewery on the day that the beer is returned.

(c) *Offsets not allowed.* An offset or deduction for returned beer will not be allowed if:

(1) The brewer was indemnified by insurance or otherwise in respect of the tax; or

(2) The brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer. If the tax is not timely credited after the offset or deduction is taken, the brewer shall make an increasing adjustment on the next tax return.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5054, 5056, 5061))

§ 25.160 Tax adjustment for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 5000.24, at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer in that calendar year, is no longer eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for consumption or sale. The brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment will be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where tax was paid at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds 2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

Preparation and Remittance of Tax Returns

§ 25.163 Method of taxpayment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.173 and 25.175. The brewer shall pay the tax by remittance to the district director or the director of the service center at the time the tax return is rendered, and the remittance will be in cash, or by check or money order payable to the "Internal Revenue Service" and delivered to the district director or the director of the service center; or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

(Act of August 16, 1954, 68A Stat. 775, as amended, 777, as amended, 778, as amended (26 U.S.C. 6302, 6311, 6313); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.164 Semimonthly return.

(a) *Requirement for filing.* Each brewer shall pay the tax on beer (unless prepaid) by semimonthly return on Form 5000.24. The brewer shall file Form 5000.24 as a semimonthly return regardless of whether tax has been prepaid as provided in § 25.175 during the return period. The brewer shall file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) *Payment of tax.* The brewer shall include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) *Return periods.* Return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* The brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and remittance as required by this section, not later than the last full calendar day of the return period next succeeding that period. When the due date for filing a

return falls on a Saturday, Sunday or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday or legal holiday.

(e) *Timely filing.* (1) When the brewer sends the semimonthly return by U.S. mail, with remittance as required by this section to the office of the district director or to the director of the service center, or without remittance as required by § 25.165 to the district director, director of the service center, or regional director (compliance) in accordance with the instructions on the form, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly return and of the remittance, if enclosed with the return.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.165 Payment of tax by electronic fund transfer.

(a) *Eligible brewers.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commerical bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, is not authorized for a taxpayer who is required by this section to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 25.159, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4. These criteria are not the same criteria applied to a controlled group of brewers under § 25.152 for the purpose of determining eligibility for a reduced rate of tax.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, Form 5000.24, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §§ 25.164 or 25.175. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 25.164. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance will be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 5000.24.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to make an electronic fund transfer immediately in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and will be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled "Payment of Tax by Electronic Fund Transfer." This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.166 Payment of reduced rate of tax.

(a) *By return, Form 5000.24.* A brewer who is eligible to pay the reduced rate of tax on beer may, upon filing the notice required by § 25.167, pay the reduced rate of tax on beer by semimonthly return as provided in § 25.164 or by prepayment return as provided in § 25.175. Payment of reduced rate of tax on beer by return, Form 5000.24, may commence with any tax return filed during a calendar year and will continue until the brewer has taxpaid 60,000 barrels of beer at the lower rate of tax, or taxpaid the number of barrels of beer apportioned under § 25.167(b)(3) for that calendar year.

(b) *By claim for refund of tax.* A brewer, eligible to pay the reduced rate of tax on beer during a calendar year,

but who has not paid the reduced rate of tax by return during that year, may file a claim, Form 843, for refund of tax excessively paid on beer during that year. Claims for refund of tax will be filed as provided in § 25.285.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.167 Notice of brewer to pay reduced rate of tax.

(a) *Requirement to file notice.* Every brewer who desires to pay the reduced rate of tax on beer authorized by 26 U.S.C. 5051(a)(2) by tax return, Form 5000.24, shall prepare a notice containing the information required by paragraph (b) of this section. The brewer shall file this notice with the regional director (compliance) for the first return period (or prepayment return) during which the brewer pays tax on beer at the reduced rate. The brewer shall file the notice each year in which payment of the reduced rate of tax on beer is made by return.

(b) *Information to be furnished.* Each notice described in paragraph (a) of this section will contain the following information:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all the breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrels limitation will be apportioned among the brewers in the group.

(c) *Perjury statement.* Each notice described in this section will be executed by the brewer under penalties of perjury as defined in § 25.11.

(Act of Aug. 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.168 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned the number will be shown on each return on Form 5000.24, filed under this part. Failure of the taxpayer to include the employer identification number on Form 5000.24 may result in imposition of the penalty specified in 26 CFR 301.6676–1. A brewer shall apply for an employer identification number on IRS Form SS–4 as provided in §§ 25.122 and 25.123.

(Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

Prepayment of Tax

§ 25.173 Brewer in default.

(a) When a remittance in payment of taxes on beer is not paid upon presentment of check or money order tendered, or when the brewer is otherwise in default in payment of tax under § 25.164, beer may not be removed for consumption or sale or taken from the brewery for consumption or sale until the tax has been prepaid as provided in § 25.175. The brewer shall continue to prepay while in default and thereafter until the regional director (compliance) finds the revenue will not be jeopardized by deferred payment of tax as provided in § 25.164.

(b) Any remittance made while the brewer is required to prepay under this section will be in cash or in the form of a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the law of any State, Territory, or possession of the United States, or in the form of a money order as provided in 26 CFR 301.6311–1 (payment by check or money order), or will be made in the form of an electronic fund transfer as provided by §§ 25.164 and 25.165.

§ 25.174 Bond not sufficient.

When the penal sum of the brewer's bond is in less than the maximum amount, the brewer shall prepay the tax on any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage of the bond. Prepayments will be made in accordance with § 25.175.

§ 25.175 Prepayment of tax.

(a) *General.* When a brewer is required to prepay tax under § 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment.* (1) Prepayment will be made by forwarding or delivering to the district director, or the director of the service center a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by § 25.165 to make payment of tax by electronic fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by delivering or forwarding it to the district director, director of the service center or regional director (compliance), in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term "forwarding" means depositing in the U.S. mail, properly addressed to the district director or the director of the service center in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

Failure to Pay Tax

§ 25.177 Evasion of or failure to pay tax; failure to file a tax return.

Sections 5671, 5673, 5684, 6651, and 6656 of Title 26 United States Code provide penalties for evasion or failure to pay tax on beer or for failure to file a tax return.

(Act of Aug. 16, 1954, 68A Stat. 821, as amended, 826, as amended (26 U.S.C. 6651, 6656); sec. 201, Pub. L. 85–859, 72 Stat. 1408, 1410, as amended (26 U.S.C. 5671, 5673, 5684))

Subpart L—Removals Without Payment of Tax

Transfer to Another Brewery of Same Ownership

§ 25.181 Eligibility.

A brewer may remove beer without payment of tax for transfer to any other brewery of the same ownership. These removals include a removal from a brewery owned by one corporation to a brewery owned by another corporation if (a) one corporation owns the controlling interest in the other corporation, or (b) the controlling interest in each corporation is owned by the same person. Beer removed under this section may, while in transit, be reconsigned to another brewery of the same ownership or be returned to the shipping brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.182 Kinds of containers.

A brewer may transfer beer without payment of tax from one brewery to another brewery belonging to the same

brewer (a) in the brewer's packages or (b) in bulk containers, subject to limitations and conditions as may be imposed by the regional director (compliance). The brewer shall mark, brand or label containers as provided by Subpart J of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.183 Determination of quantity transferred.

The shipping brewer shall determine the quantity of beer shipped at the time of removal from the consignor brewery, and the receiving brewer shall determine the quantity of beer received at the time of receipt at the consignee brewery. The brewer shall equip the consignor and consignee breweries with suitable measuring devices to allow accurate determination of the quantities of beer to be shipped and received in bulk conveyances.

(Sec 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.184 Losses in transit.

(a) *Liability for losses.* The brewer is liable under the bond of the brewery to which beer is transferred for the tax on beer lost in transit. If the brewer reconsigns beer while in transit or returns beer to the shipping brewery, the brewer is liable under the bond of the brewery to which the beer is reconsigned or returned for the tax on beer lost in transit.

(b) *Losses allowable without claim.* If loss of beer being transferred does not exceed two percent of the quantity shipped, the brewer is not required to file a report of loss or a claim for allowance of the loss if there are no circumstances indicating that the beer, or any portion of the beer lost, was stolen or otherwise diverted to an unlawful purpose.

(c) *Losses requiring claim.* If loss of beer during transit exceeds two percent of the quantity shipped, the brewer shall submit a claim under penalties of perjury for remission of the tax on the entire loss. The brewer shall submit the claim to the regional director (compliance) of the region in which the brewery to which the beer was shipped, reconsigned or returned, is located. The brewer shall prepare and submit the claim as provided in § 25.286.

(d) *Losses requiring immediate report.* The brewer shall report to the regional diretor (compliance) a loss by fire, theft, casualty or any other unusual loss as soon as it becomes known.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended 1389 (26 U.S.C. 5056, 5414))

§ 25.185 Mingling.

Beer transferred without payment of tax from one brewery to another brewery belonging to the same brewer may be mingled with beer of the receiving brewery. The brewer may handle the beer transferred in accordance with the requirements of this part relating to beer produced in the receiving brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.186 Record of beer transferred.

(a) *Preparation of invoice.* When beer is transferred between breweries without payment of tax, the shipping brewer shall prepare a serially numbered invoice or commercial record, in duplicate, covering the transfer. The invoice will be marked "transfer without payment of tax" and will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) For cases, the number and size of cases and the total barrels;

(5) For kegs, the number and size of kegs and the total barrels;

(6) For shipments in bulk containers, the type of container, identity of the container and the total barrels.

(b) *Reconsignment of beer.* When beer is reconsigned in transit to another brewery of the same ownership, the shipping brewer shall (1) prepare a new invoice showing reconsignment to another brewery and shall void all copies of the original invoice, or (2) shall mark all copies of the original invoice with the words "Reconsigned to ———," followed by the name and address of the brewery to which the beer is reconsigned.

(c) *Disposition of invoice.* On shipment of the beer, the shipping brewer shall send the original copy of the invoice to the receiving brewer, and shall retain the other copy for the brewery records. On receipt of the beer, the receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall note on the invoice any discrepancies in the beer received, and retain the invoice in the brewery records.

(d) *Preparation of records and report.* The shipping brewer shall use the invoice showing beer removed to another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the monthly report, Form 5130.9. The receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall use the invoice showing beer received from another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

Removal of Beer Unfit for Beverage Use

§ 25.191 General.

A brewer may remove sour or damaged beer, or beer which the brewer has deliberately rendered unfit for beverage use, from the brewery without payment of tax for use in manufacturing. Unfit beer may be removed under this section for use as distilling material at alcohol fuel plants qualified under Subpart Y of part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.192 Removal of sour or damaged beer.

(a) *Containers.* The brewer shall remove sour or damaged beer (1) in casks or other packages, containing not less than one barrel each and unlike those ordinarily used for packaging beer, or (2) in tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of a vessel. The brewer shall mark the nature of the contents on each container.

(b) *Beer meter.* The brewer shall remove sour or damaged beer without passing it through the meter (if any) or racking machine.

(c) *Records and reports.* The brewer shall record the removal of sour or damaged beer in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5033))

Removals for Analysis, Research, Development or Testing

§ 25.195 Removals for analysis.

A brewer may remove beer, without payment of tax, to a laboratory for analysis to determine the character or quality of the product. Beer may be removed for analysis in packages or in bulk containers. The brewer shall record beer removed for analysis in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.196 Removals for research, development or testing.

(a) A brewer may remove beer, without payment of tax, for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems,

materials, or equipment relating to beer or brewery operations. Beer may be removed for research, development or testing in packages or in bulk containers.

(b) The brewer shall mark each barrel, keg, case, or shipping container with the name and address of the brewer and of the consignee, the identity of the product, and the quantity of the product. If necessary to protect the revenue, the regional director (compliance) may require a brewer to mark each container with the words "Not for Consumption or Sale." If beer is removed in a bulk conveyance, the brewer shall place the marks on the route board of the conveyance.

(c) The brewer shall record beer removed for research, development, or testing in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Removal of Beer to a Contiguous Distilled Spirits Plant

§ 25.201 Removal by pipeline.

A brewer may remove beer from the brewery, without payment of tax, by pipeline to the bonded premises of a distilled spirits plant which is authorized to produce distilled spirits and which is located contiguous to the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1389, as amended (26 U.S.C. 5222, 5412))

Exportation

§ 25.203 Exportation without payment of tax.

A brewer may remove beer without payment of tax (a) for exportation, (b) for use as supplies on vessels and aircraft, or (c) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with Part 252 of this chapter. Beer may be removed from a brewery in bottles, kegs, or in bulk containers.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Beer For Personal or Family Use

§ 25.205 Production.

(a) Any adult may produce beer, without payment of tax, for personal or family use and not for sale. An adult is any individual who is 18 years of age or older. If the locality in which the household is located requires a greater minimum age for the sale of beer to individuals, the adult shall be that age before commencing the production of beer. This exemption does not authorize the production of beer for use contrary to State or local law.

(b) The production of beer per household, without payment of tax, for personal or family use may not exceed:

(1) 200 gallons per calendar year if there are two or more adults residing in the household, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) Partnerships except as provided in § 25.207, corporations or associations may not produce beer, without payment of tax, for personal or family use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.206 Removal of beer.

Beer made under § 25.205 may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging. Beer removed under this section may not be sold or offered for sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.207 Removal from brewery for personal or family use.

Any adult, as defined in § 25.205, who operates a brewery under this part as an individual owner or in partnership with others, may remove beer from the brewery without payment of tax for personal or family use. The amount of beer removed for each household, without payment of tax, per calendar year may not exceed 100 gallons if there is one adult residing in the household or 200 gallons if there are two or more adults residing in the household. Beer removed in excess of the above limitations will be reported as a taxable removal.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Subpart M—Beer Returned to Brewery

§ 25.211 Beer returned to brewery.

(a) *General.* Beer, produced in the United States, on which the brewer has paid or determined the tax may be returned to any brewery of the brewer. Upon return of the beer to the brewery, the brewer shall determine the actual quantity of beer received, expressed in barrels. For cases or bottles, the label may be used to determine the quantity. When kegs or cases containing less than the original contents are received, the brewer shall determine the actual quantity of beer by weight or by other accurate means. The brewer shall determine the balling and alcohol content of returned keg beer unless the keg is equipped with tamper-proof fittings. The quantity of beer returned may be established by weighing individual packages and subtracting package weight, or by weighing accumulated beer and subtracting tare weight of dumpsters, pallets, packages and the like.

(b) *Disposition of returned beer.* The brewer may dispose of beer returned under this subpart in any manner prescribed for beer which has never left the brewery. If returned beer is again removed for consumption or sale, tax will be determined and paid without respect to the tax which was determined or paid at the time of prior removal of the beer.

(c) *Records.* For beer returned to the brewery under this subpart, the brewer's daily records under § 25.292 will show:

(1) Date;

(2) Quantity of beer returned;

(3) If the title to the beer has passed, the name and address of the person returning the beer; and

(4) Name and address of the brewery from which the beer was removed, if different from the brewery to which returned.

(d) *Supporting records.* The records of returned beer will be supported by invoices, credit memoranda or other commercial papers, and will differentiate beween beer returned to the brewery from which removed and beer returned to a brewery different from the one from which removed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended, 1390, as amended (26 U.S.C. 5054, 5056, 5415))

§ 25.212 Beer returned to brewery from which removed.

If beer on which the tax has been determined or paid is returned to the brewery from which removed, the brewer shall take the quantity of beer as an offset or deduction against the quantity of beer removed for consumption or sale from the brewery on that business day, as provided in § 25.159

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1390, as amended (26 U.S.C. 5056, 5415))

§ 25.213 Beer returned to brewery other than that from which removed.

(a) *Refund or adjustment of tax.* If beer on which the tax has been determined or paid is returned to a brewery of the brewer other than the one from which removed, the brewer may make a claim for refund or relief of tax or may make an adjustment to the beer tax return, for the tax on the beer

returned to the brewery. The brewer may not take an offset for beer returned to the brewery other than the one from which removed. Procedures for filing claims for refund or relief of tax or for making adjustments to the beer tax return are contained in Supart T of this part.

(b) *Notice.* A brewer need not file notice of intention to return beer to a brewery other than the one from which removed unless required by the regional director (compliance). When a notice is required, the brewer shall serially number each notice and execute it under penalties of perjury as defined in § 25.11. The brewer shall file it with the regional director (compliance) through the area supervisor of the area in which the brewery is located where the beer is to be returned. The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases and the actual quantity of beer, in barrels;

(2) The name and address of the brewery from which the beer was removed;

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined; and

(4) If the title to the beer has passed, the name and address of the person returning the beer.

(c) *Return of beer.* If the brewer is required to file a notice of intention to return beer to the brewery, the brewer may bring the beer onto the brewery premises prior to filing the notice. The brewer shall segregate the returned beer from all other beer at the brewery and clearly identify it as returned beer. The returned beer will be retained intact for inspection by an ATF officer until the notice has been filed and disposition authorized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Subpart N—Voluntary Destruction

§ 25.221 Voluntary destruction of beer.

(a) *On brewery premises.* A brewer may destroy, at the brewery, beer on which the tax has not been determined or paid.

(b) *Destruction without return to brewery.* A brewer may destroy beer on which the tax has been paid or determined at a location other than any of the breweries operated by the brewer, upon compliance with his subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.222 Notice of brewer.

(a) *Beer to be destroyed.* When a brewer possesses beer which has been taxpaid or tax determined and which the brewer wishes to destroy at a location other than at any of the brewer's breweries, the brewer shall give written notice of intention to destroy the beer. The brewer shall submit this notice to the regional director (compliance) through the area supervisor of the area in which the beer is to be destroyed.

(b) *Execution of notice.* The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in § 25.11. The brewer shall specify the date on which the beer is to be destroyed; this date may not be less than 12 days from the date the notice is mailed or delivered to the area supervisor.

(c) *Information to be furnished.* The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases, and the actual quantity of beer in barrels. When kegs containing less than the actual contents are to be destroyed, the brewer shall determine the actual content of beer by weight or by other accurate means.

(2) The date on which the beer was received for destruction.

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined.

(4) If the title of the beer has passed, the name and address of the person returning the beer.

(5) The location at which the brewer desires to destroy the beer and the reason for not returning the beer to the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.223 Destruction of beer off brewery premises.

(a) *Destruction without supervision.* A brewer may destroy beer without supervision if the regional director (compliance) does not advise the brewer before the date specified in the notice that destruction of the beer is to be supervised.

(b) *Destruction with supervision.* The regional director (compliance) may require that an ATF officer verify the information in the notice of destruction or witness the destruction of the beer. The regional director (compliance) may also require a delay in the destruction of the beer or, if the place of destruction is not readily accessible to an ATF officer, may require that the beer be moved to a more convenient location. In this case, the brewer may not destroy the beer except under the conditions imposed by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.224 Refund or adjustment of tax.

(a) *Claim for refund or relief of tax.* The tax paid by a brewer on beer produced in the United States and destroyed in accordance with this subpart may be refunded to the brewer. If the tax has not been paid, the brewer may be relieved of liability for the tax. Claims for refund or relief of tax will be filed as provided in Subpart T of this part.

(b) *Adjustments to the excise tax return.* A brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, covering the tax paid on beer produced in the United States and destroyed in accordance with this subpart. Procedures for making adjustments to tax returns are contained in Subpart T of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Subpart O—Beer Purchased From Another Brewer

§ 25.231 Finished beer.

(a) A brewer may obtain beer in barrels and kegs, finished and ready for sale from another brewer. The purchasing brewer may furnish the producing brewer barrels and kegs marked with the purchasing brewer's name and location. The producing brewer shall pay the tax as provided in Subpart K of this part.

(b) A brewer may not purchase taxpaid or tax determined beer from another brewer in bottles or cans which bear the name and address of the purchasing brewer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5413))

§ 25.232 Basic permit.

A brewer who engages in the business of purchasing beer for resale is required to possess a wholesaler's or importer's basis permit under the provisions of section 3(c) of the Federal Alcohol Administration Act and Part 1 of this chapter.

Subpart P—Cereal Beverage

§ 25.241 Production.

Brewers may produce cereal beverage and remove it without payment of tax from the brewery. The method of

production shall insure that the alcohol content of the cereal beverage will not increase while in the original container after removal from the brewery. The brewer shall keep cereal beverage separate from beer, and shall measure the quantity of cereal beverage transferred for packaging in accordance with § 25.41.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.242 Markings.

(a) *Designation.* When bottled or packaged, cereal beverage may be designated "Cereal Beverage," "Malt Beverage," "Near Beer," or other distinctive name. If designated "Near Beer," those words will be printed identically in the same size or style of type, in the same color of ink, and on the same background.

(b) *Barrels and kegs.* A brewer may remove cereal beverage in barrels and kegs if the sides are durably painted at each end with a white stripe not less than 4 inches in width and the heads are painted in a solid color, with conspicuous lettering in a contrasting color reading "Nontaxable under section 5051 I.R.C." The brewer shall also legibly mark the brewer's name or trade name and the address on the container.

(c) *Bottles.* Bottle labels shall show the name or trade name and address of the brewer, the distinctive name of the beverage, if any, and the legend "Nontaxable under section 5051 I.R.C." Other information which is not inconsistent with the requirements of this section may be shown on bottle lablels.

(d) *Cases.* The brewer shall mark cases or shipping containers to show the nature of the product and the name or trade name and address of the brewer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart Q—Removal of Brewer's Yeast and Other Articles

§ 25.251 Authorized removals.

(a) *Brewer's yeast.* A brewer may remove brewer's yeast, in liquid or solid form containing not less than 10 percent solids (as determined by the methods of analysis of the American Society of Brewing Chemists), from the brewery in barrels, tank trucks, in other suitable containers, or by pipeline.

(b) *Containers.* Containers will bear a label giving the name and location of the brewery and including the words "Brewer's Yeast."

(c) *Pipeline.* If brewer's yeast is removed by pipeline, the pipeline will be described in the Brewer's Notice, Form 5130.10. The premises where the brewer's yeast is received is subject to inspection by an ATF officer during ordinary business hours.

(d) *Other articles.* A brewer may remove malt, malt syrup, wort, and other articles from the brewery.

(e) *Methods of Analysis of the American Society of Brewing Chemists, Seventh Edition (1976).* In reference to paragraph (a) of this section, this incorporation by reference was approved by the Director of the Federal Register on March 23, 1981, and is available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC. This publication is available from the American Society of Brewing Chemists, 40 Pilot Knob Road, St. Paul, Minnesota 55121.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.252 Records.

(a) *Production.* The brewer shall keep records of the production of malt syrup, wort, and other articles which are removed from the brewery. The record shall include the quantities and kinds of materials used, and in the case of wort and concentrated wort, the balling.

(b) *Removals.* The brewer shall keep records of removals of brewer's yeast, malt and other articles from the brewery. The record shall include the quantity and date of removal of each lot, and the name and address of the consignee. These records may consist of invoices or shipping documents.

(c) *Inspection.* All records under this section shall be available for inspection at the brewery by an ATF officer during normal business hours.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

Subpart R—Beer Concentrate

§ 25.261 General.

(a) *Authorized processes.* A brewer may, in accordance with this subpart—

(1) Produce concentrate from beer,

(2) Reconstitute beer from concentrate,

(3) Transfer concentrate from one brewery to another brewery of the same ownership, and

(4) Remove concentrate without payment of tax for exportation, or for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation in accordance with Part 252 of this chapter.

(b) *Brewery treatment of concentrate.* Beer reconstituted from concentrate in accordance with this subpart shall (except with respect to the additional labeling of reconstituted beer under § 25.263) be treated the same as beer which has not been concentrated and reconstituted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.262 Restrictions and conditions on processes of concentration and reconstitution.

(a) *Conditions on concentration.* A brewer may not employ any process of concentration which separates alcohol spirits from any fermented substance.

(b) *Conditions on reconstitution.*

(1) The process of reconstitution of beer will consist of the addition to the concentrate of carbon dioxide and water only.

(2) A brewer may not employ any process of concentration or reconstitution unless the beer upon reconstitution will, without the addition of any substance other than carbon dioxide and water, possess the taste, aroma, color, and other characteristics of beer which has not been concentrated.

(3) The process of reconstitution shall provide for the addition of sufficient water to restore the concentrate to a volume not less than, and an alcohol content not greater than, that of the beer used to produce the concentrate.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1315, as amended, 1388, as amended (26 U.S.C. 5002, 5401))

§ 25.263 Production of concentrate and reconstitution of beer.

(a) *Operations at brewery.* A brewer may concentrate beer or reconstitute beer only at a brewery.

(b) *Marking of containers.* Containers of concentrate transferred to other breweries of the same ownership, and containers of concentrate removed for export shall be marked, branded and labeled in the same manner as prescribed for containers of beer in Subpart J of this part. All containers shall be identified as containers of beer concentrate.

(c) *Mingling with beer.* A brewer may not mingle concentrate with unconcentrated beer. A brewer may mingle reconstituted beer with other beer at the brewery.

(d) *Additional labeling.* Barrels, kegs, and bottles containing beer produced from concentrate will show by label or otherwise the statement "PRODUCED FROM . . . CONCENTRATE," the blank to be filled in with the appropriate class designation of the beer (beer, lager, ale, stout, etc.) from which the concentrate was made. The statement will be conspicuous and readily legible and, in the case of bottled beer, will appear in direct conjunction with, and as a part of,

the class designation. All parts of the class designation will appear in lettering of substantially the same size and kind.

(3) *Records and reports.* Brewers producing concentrate and brewers reconstituting beer from concentrate shall keep the records and reports required by Subpart U of this part.

§ 25.264 Transfer between breweries.

(a) *Authorized transfers.* A brewer may remove from the brewery, without payment of tax, concentrate produced from beer for transfer to any other brewery of the same ownership (within the limits of ownership described in § 25.181).

(b) *Record of concentrate transferred.* When transferring concentrate between breweries, the shipping brewer shall prepare for each conveyance a serially numbered invoice or commercial record covering the transfer. The invoice will be clearly marked to indicate that concentrate produced from beer is being transferred. The invoice will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) The number of containers transferred, the balling, percentage of alcohol by volume, and the total barrels of concentrate; and

(5) A description of the beer from which the concentrate was produced including the number of barrels, balling, and percentage of alcohol by volume.

(c) *Disposition of invoice.* On shipment of the concentrate, the shipping brewer shall send the original copy of the invoice to the receiving brewer and shall retain a copy for the brewery records. On receipt of the concentrate, the receiving brewer shall note on the invoice any discrepancies in the concentrate received and retain the invoice in the brewery records.

Subpart S—Pilot Brewing Plants

§ 25.271 General.

(a) *Establishment.* A person may establish and operate a pilot brewing plant off the brewery premises for research, analytical, experimental, or developmental purposes relating to beer or brewery operations. Pilot brewing plants will be established as provided in this subpart.

(b) *Authorized removals.* Beer may be removed from a pilot brewing plant only for analysis or organoleptic examination.

(c) *Transfers between brewery and pilot brewing plant.* Subject to Subpart L of this part, beer may be transferred to a pilot brewing plant from a brewery of the same ownership, and beer may be transferred without payment of tax from a pilot brewing plant to a brewery of the same ownership.

(d) *Other regulations applicable.* The provisions of Subparts A, B, F, I, K, and of §§ 25.63, 25.64, and 25.21 are applicable to pilot brewing plants established under this subpart. Also, the provisions of §§ 25.72–25.75, 25.77, 25.92 and 25.94–25.105 relating to bonds, and consents of surety, and of §§ 25.131–25.134 are applicable to bonds and consents of surety given, and to changes in the proprietorship, location, and premises of pilot brewing plants established under this subpart.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.272 Application.

(a) *Form of application.* Any person desiring to establish a pilot brewing plant under the subpart shall file an application with the regional director (compliance). The application will be in writing and will include the following:

(1) Name and address of the applicant;

(2) Description of the premises and equipment to be used in the operations;

(3) Nature, purpose, and extent of the operations; and

(4) A statement that the applicant agrees to comply with all provisions of this part applicable to the operations to be conducted.

(b) *Additional information.* The regional director (compliance) may at any time before or after approval of an application, require the submission of additional information necessary for administration of this part or for protection of the revenue.

(c) *Authorization of operations.* The regional director (compliance) may authorize the operation of a pilot brewing plant if it is determined that the plant will be operated solely for one or more of the purposes specified in § 25.271, and that operations will not jeopardize the revenue.

(d) *Withdrawal of authorization.* The regional director (compliance) may withdraw authorization to operate a pilot brewing plant if in his or her judgment, the revenue would be jeopardized by the operations of the plant.

(e) *Commencement of operations.* A person may not begin operation of a pilot brewing plant until the regional director (compliance) has approved the application required by this section.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.273 Action on application.

If the regional director (compliance) approves the application for a pilot brewing plant, he or she will note approval on the application and forward a copy to the applicant. The applicant shall file the copy of the approved application at the premises, available for inspection by an ATF officer.

§ 25.274 Bond.

(a) *Requirement.* Any person requesting authorization to establish a pilot brewing plant under this subpart shall execute and file a brewer's bond, Form 5130.22. A person may not begin operation of a pilot brewing plant until receiving notice from the regional director (compliance) of the approval of the bond. Operations may continue only as long as an approved bond is in effect.

(b) *Penal sum.* The penal sum of a bond covering the premises of a pilot brewing plant will be an amount equal to the potential tax liability of the maximum quantity of beer on hand, in transit to the plant, and unaccounted for at any one time, computed by multiplying the quantity of beer in barrels by the rate of tax in 26 U.S.C. 5051. The penal sum of the bond (or total penal sum if original and strengthening bonds are filed) may not exceed $50,000 or be less than $500.

(c) *Conditions of bonds.* The bond will be conditioned that the operator of the pilot brewing plant shall pay, or cause to be paid, to the United States according to the laws of the United States and the provisions of this part, the taxes, including penalties and interest for which the operator shall become liable, on all beer brewed, produced, or received on the premises.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.275 Special tax.

The special tax imposed on a brewer by 26 U.S.C. 5091 shall be paid in accordance with Subpart I of this part.

§ 25.276 Operations and records.

(a) *Commencement of operations.* A person may commence operation of a pilot brewing plant upon receipt of the approved application and bond.

(b) *Reports.* The operator of a pilot brewing plant is not required to file monthly reports with the regional director (compliance).

(c) *Records.* The operator of a pilot brewing plant shall maintain records which, in the opinion of the regional director (compliance), are appropriate to the type of operation being conducted. These records will include information sufficient to account for the receipt,

production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials. These records will be available for inspection by an ATF officer.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.277 Discontinuance of operations.

When operations of a pilot brewing plant are to be discontinued, the operator shall notify the regional director (compliance) stating the purpose of the notice and giving the date of discontinuance. When operations have been completed and all beer at the premises has been disposed of and accounted for, the regional director (compliance) will note approval on the notice and return a copy to the operator.

Subpart T—Refund or Adjustment of Tax or Relief From Liability

§ 25.281 General.

(a) *Reasons for refund or adjustment of tax or relief from liability.* The tax paid by a brewer on beer produced in the United States may be refunded, or adjusted on the tax return (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax on:

(1) Beer returned to any brewery of the brewer subject to the conditions outlined in Subpart M of this part;

(2) Beer voluntarily destroyed by the brewer subject to the conditions outlined in Subpart N of this part;

(3) Beer lost by fire, theft, casualty, or act of God subject to the conditions outlined in § 25.282.

(b) *Refund of beer tax excessively paid.* A brewer may be refunded the tax excessively paid on beer subject to the conditions outlined in § 25.285.

(c) *Rate of tax.* Brewers who have filed the notice required by § 25.167 and who have paid the tax on beer at the reduced rate of tax shall make claims for refund or relief of tax, or adjustments on the tax return, based upon the lower rate of tax. However, a brewer may make adjustments or claims for refund or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the regional director (compliance) that the tax was paid or determined at the higher rate of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.282 Beer lost by fire, theft, casualty, or act of God.

(a) *General.* The tax paid by any brewer on beer produced in the United States may be adjusted (without interest) on the excise tax return, may be refunded or credited (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax if, before transfer of title to the beer to any other person, the beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. The tax liability on excessive losses of beer from transfer between breweries of the same ownership may be remitted as provided in § 25.286.

(b) *Unmerchantable beer.* When beer is rendered unmerchantable by fire, casualty, or act of God, refund, credit or adjustment of tax, or relief from liability of tax will not be allowed unless the brewer proves to the satisfaction of the regional director (compliance) that the beer cannot be salvaged and returned to the market for consumption or sale.

(c) *Beer lost or destroyed.* When beer is lost or destroyed, whether by theft or otherwise, the regional director (compliance) may require the brewer to file a claim for relief from the tax and to submit proof as to the cause of the loss.

(d) *Beer lost by theft.* When it appears that beer was lost by theft, the tax shall be collected unless the brewer proves to the satisfaction of the regional director (compliance) that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Notification of regional director (compliance).* (1) A brewer who sustains a loss of beer before transfer of title of the beer to another person and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability of tax, shall, on learning of the loss of beer, immediately notify in writing the regional director (compliance) of the region in which the loss occurred of the nature, cause, and extent of the loss, and the place where the loss occurred. Statements of witnesses or other supporting documents shall be furnished if available.

(2) A brewer possessing unmerchantable beer and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability shall notify in writing the regional director (compliance) of the region in which the beer is, of the circumstances by which the beer became unmerchantable, and shall state why the beer cannot be salvaged and returned to the market for consumption or sale.

(f) *Additional information.* The regional director (compliance) may require the brewer to submit additional evidence necessary to verify the tax adjustment or for use in connection with a claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.283 Claims for refund of tax.

(a) *Beer returned to brewery or voluntarily destroyed.* Claims for refund of tax on beer returned to a brewery under the provisions of § 25.213 or voluntarily destroyed at a location other than a brewery shall include:

(1) The name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable;

(2) The quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined;

(3) The amount of tax for which the claim is filed;

(4) The reason for return or voluntary destruction of the beer and the related facts;

(5) Whether the brewer is indemnified by insurance or otherwise in respect of the tax, and if so, the nature of the indemnification;

(6) The claimant's reasons for believing the claim should be allowed;

(7) The date the beer was returned to the brewery, if applicable;

(8) The name of the person from whom the beer was received;

(9) A statement that the tax has been fully paid or determined; and

(10) A reference to the notice (if required) filed under §§ 25.213 or 25.222.

(b) *Beer lost, destroyed, or rendered unmerchantable.* Claims for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God shall contain:

(1) Information required by paragraphs (a) (1), (2), (3), (5), and (6) of this section;

(2) A statement of the circumstances surrounding the loss;

(3) When applicable, the reason the beer rendered unmerchantable cannot be returned to the market for consumption or sale;

(4) Date of the loss, and if lost in transit, the name of the carrier;

(5) A reference incorporating the notice required by § 25.282; and

(6) When possible, affidavits of persons having knowledge of the loss, unless the affidavits are contained in the notice given under § 25.282.

(c) *Additional evidence.* The regional director (compliance) may require the submission of additional evidence in

support of any claim filed under this section.

(d) *Filing of claim.* Claim for refund of tax shall be filed on IRS Form 843 with the regional director (compliance) of the region in which the beer was lost, returned, destroyed, or rendered unmerchantable. Claims shall be filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable. Claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.284 Adjustment of tax.

(a) *Adjustment of tax in lieu of refund.* In lieu of filing a claim for refund of tax as provided in § 25.283, a brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, for the amount of tax paid on beer returned to the brewery, voluntarily destroyed, lost, destroyed, or rendered unmerchantable.

(b) *Beer returned to brewery other than from which removed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer returned to the brewery under § 25.213. The adjustment will be made on the tax return filed for the brewery to which the beer was returned. The adjustment may not be made prior to the return of beer to the brewery. If the brewer is required to file a notice under § 25.213, the adjustment may not be made until the regional director (compliance) authorizes disposition of the beer.

(c) *Beer voluntarily destroyed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer voluntarily destroyed under Subpart N of this part. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. The adjustment may not be made prior to the destruction of the beer.

(d) *Beer lost, destroyed or rendered unmerchantable.* An adjustment may be made on the excise tax return for the amount of tax paid on beer lost, destroyed, or rendered unmerchantable under § 25.282. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. A brewer may not make an adjustment prior to notification of the regional director (compliance) required under § 25.282(e). When beer appears to have been lost due to theft, the brewer may not make an adjustment to the tax return until establishing to the satisfaction of the regional director (compliance) that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Condition of adjustments.* (1) All adjustments will be made within 6 months of the return, destruction, loss, or rendering unmerchantable of the beer.

(2) Adjustment of the tax paid will be made without interest.

(3) An adjustment may not be taken if the brewer was indemnified by insurance or otherwise in respect of the tax.

(f) *Records.* When brewers make adjustments on the excise tax return in lieu of filing a claim, they shall keep the following records:

(1) For beer returned to the brewery or voluntarily destroyed, the records required by §§ 25.283(a) (1), (2), (4), (5), (7), (8), and (10).

(2) For beer lost, destroyed, or rendered unmerchantable, the records required by § 25.283 (a) (1), (2), (5), (b) (2), (3), (4), (5), and (6).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.285 Refund of beer tax excessively paid.

(a) *Eligibility.* A brewer who, under the provisions of § 25.152, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051 (a)(2), but who did not pay tax at the reduced rate by return, Form 5000.24, during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund to tax on IRS Form 843 with the regional director (compliance) in the region in which the brewer's principal place of business is located, within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see 26 CFR 301.6511(a)–1 and 301.6511(b)–1.

(b) *Calculation of refund.* The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of 60,000 barrels of beer per calendar year or the limitation as determined in § 25.152(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) *Information to be furnished.* Each claim for refund of tax filed under this section shall include the following information:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.

(3) Amount of tax paid in excess.

(4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.

(5) A statement that the brewer is not a member of a controlled group of brewers (as defined in § 25.152(b)(1) or, if the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Act of August 16, 1954, 68A Stat. 791, as amended (26 U.S.C. 6402); sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 by the brewer or the brewer's authorized agent and submitted with Form 5130.9 of the receiving brewery for the month on which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the month in which the loss is discovered. When, for valid reasons, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to the monthly report stating the reason whey the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

(b) *Information to be shown.* The claim will show the following information:

(1) The date of the shipment;

(2) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate(s) of tax at which the beer would have been removed for consumption or sale;

(3) The percent of loss;

(4) The specific cause of the loss;

(5) The nature of the loss (leakage, breakage, casualty, etc.);

(6) Information as to whether the claimant has been indemnified by

insurance or otherwise in respect to the tax, or has any claim for indemnification; and

(7) For losses due to casualty or accident, statements from the carrier or other persons having personal knowledge of the loss, if available.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1389, as amended (26 U.S.C. 5056, 5414))

Subpart U—Records and Reports

§ 25.291 Records.

(a) *General.* (1) The records to be maintained by brewers include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the brewer's commercial documents, rather than records prepared expressly to meet the requirements of this part, if those documents contain all the details required by this part, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in their examination.

(b) *Entries.* (1) Each entry required by this part to be made in daily records will be made not later than the close of the business day next succeeding the day on which the transaction occurs.

(2) When the brewer prepares transaction or business records concurrenty with the individual operation or transaction and these records contain all the required information with respect to the operation or transaction, entries in daily records may be made not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(c) *Content.* (1) All entries in the daily records required by this subpart will show the date of the operation or transaction.

(2) Daily records will accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable—

(i) Brewers to prepare summaries, reports, and returns required by this part, and

(ii) ATF officers to verify removals of beer and cereal beverages, to verify claims, and to ascertain if there has been compliance with law and regulations.

(d) *Format.* (1) The brewer's copies of prescribed forms which bear all required details will be utilized as daily records.

(2) When a form is not prescribed, the records required by this subpart will be those commercial records used by the brewer in the accounting system and will bear all required details.

(3) The brewer shall maintain daily records required by this part so they clearly and accurately reflect all mandatory information. When the format or arrangement of the daily records is such that the information is not clearly or accurately shown, the regional director (compliance) may require a format or arrangement which will clearly and accurately show the information.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.292 Daily records of operations.

(a) *Daily records.* A brewer shall maintain daily records of operations which show by quantity the following:

(1) Each kind of material received and used in the production of beer and cereal beverage (including the balling and the quantity of each type of material used in the production of wort or concentrated wort).

(2) Beer and cereal beverage produced (including water added after production is determined).

(3) Beer and cereal beverage transferred for and returned from bottling.

(4) Beer and cereal beverage transferred for and returned from racking.

(5) Beer and cereal beverage bottled.

(6) Beer and cereal beverage racked.

(7) Cereal beverage removed from the brewery.

(8) Beer removed for consumption or sale. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered (not required for sales in quantities of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and in bottels.

(9) Beer removed without payment of tax. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered, and the quantities of beer removed in kegs, bottles, tanks, tank cars, tank trucks, tank ships, barges or deep tanks of vessels.

(10) Packaged beer used for laboratory samples at the brewery.

(11) Beer consumed at the brewery.

(12) Beer returned to the brewery from which removed.

(13) Beer returned to the brewery after removal from another brewery owned by the brewer.

(14) Beer reconditioned, used as material, or destroyed.

(15) Beer received from other breweries or received from pilot brewing plants.

(16) Beer and cereal beverage lost due to breakage, theft, casualty, or other unusual cause.

(17) Brewing materials sold or transferred to pilot brewing plants (including the name and address of the person to whom shipped or delivered) and brewing materials used in the manufacture of wort, wort concentrate, malt syrup, and malt extract for sale or removal.

(18) Record of tests of measuring devices.

(19) Beer purchased from other brewers in the purchasing brewer's barrels and kegs and such beer sold to other brewers.

(b) *Daily summary records.* A brewer shall maintain daily summaries of the following transactions:

(1) Beer and cereal beverage bottled;

(2) Beer and cereal beverage racked;

(3) Beer removed for consumption or sale;

(4) Beer returned to the brewery from which removed;

(5) Beer returned to the brewery after removed from another brewery owned by the brewer; and

(6) Brewing materials, beer and cereal beverage in process, and finished beer and cereal beverage on hand.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.293 Record of ballings and alcohol content.

The brewer shall maintain a record of the ballings of the wort produced, and of the ballings and the alcohol content of beer and cereal beverage transferred for bottling and racking, between breweries in bulk conveyances, and to pilot brewing plants. Records showing ballings and alcohol content need not be consolidated and averaged daily unless the brewer so desires.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.294 Inventories.

(a) The brewer shall take a physical inventory of beer and cereal beverage at least once each calender month. The brewer may take this inventory within 7 days of the close of the calendar month for which made.

(b) The brewer shall make a record of inventories of beer or cereal beverage which will show the following:

(1) Date taken;

(2) Quantity of beer and cereal beverage on hand;

(3) Losses, gains, and shortages; and

(4) Signature, under penalties of perjury of the brewer or person taking this inventory.

(c) The brewer shall retain inventory records and make them available for inspection by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.295 Record of unsalable beer.

A brewer having unsalable beer in packages or tanks in the brewery may destroy, recondition, or use the beer as material. The brewer shall report the quantity of the beer destroyed, reconditioned, or used as materials, in daily records and on Form 5130.9. If the unsalable beer consists of rejects from the packaging operations, the beer may be destroyed without being included in the packaging production records, and, when so destroyed, will be so reported in the brewer's daily records and on Form 5130.9. When reject bottled beer is to be consumed at the brewery or sold to brewery employees, or is cased or otherwise accumulated pending other disposition, the quantity will be included in the packaging production and be so reported in the brewer's daily records and on Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389 as amended, 1390, as amended, 1395 as amended (26 U.S.C. 5411, 5415, 5555))

§ 25.296 Record of beer concentrate.

(a) *Daily records.* A brewer who produces concentrate or reconstitutes beer shall maintain daily records which accurately reflect the balling, quantity, and alcohol content of—

(1) Beer entered into the concentration process;

(2) Concentrate produced;

(3) Concentrate transferred to other breweries;

(4) Concentrate exported;

(5) Concentrate received;

(6) Concentrate used in reconstituting beer; and

(7) Beer reconstituted.

(b) *Monthly summary reports.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer will prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the month. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the month;

(2) Concentrate on hand end of the month;

(3) Concentrate produced;

(4) Concentrate received; and

(5) Specific disposition of concentrate such as "used in reconstitution," "removed for export," "removed to foreign-trade zone," or "transferred to other breweries."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.297 Brewer's monthly report, Form 5130.9

The brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared. The brewer shall retain a copy of the Form 5130.9 for the brewery records.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395 as amended (26 U.S.C. 5415, 5555))

§ 25.298 Excise tax return, Form 5000.24.

All entries on the excise tax return, Form 5000.24, will be fully supported by accurate and complete records. The brewer shall file a copy of Form 5000.24 as a part of the records at the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5061, 5415, 5555))

§ 25.299 Execution under penalties of perjury.

When a return, form, or other document is required by this part or in the instruction on or with the return, form, or other document to be executed under the penalties of perjury, as defined in § 25.11, it will be so executed and will be signed by the brewer or other duly authorized person.

(Act of August 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065))

§ 25.300 Retention and preservation of records.

(a) *Place of maintenance.* Records required by this part will be prepared and kept by the brewer at the brewery where the operation or transaction occurs and will be available for inspection by any ATF officer during business hours.

(b) *Reproduction of original records.* Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the brewer shall reproduce the record by a process under § 25.301. The reproduced record will be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original are applicable to the reproduction.

(c) *Retention of records.* Records required by this part will be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. The regional director (compliance) may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(d) *Data Processing.* (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the brewery if the original transaction (source) records required by §§ 25.292–25.298 are kept available for inspection at the brewery.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.301 Photographic copies of records.

(a) *General.* Brewers may record, copy, or reproduce records required by this part. Brewers may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as through it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the brewer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

Par. 5. The authority citation for 27 CFR Part 252 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5176, 5204–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

Par. 6. The table of sections to Part 252 is amended as follows:

PART 252—EXPORTATION OF LIQUORS

* * * * *

Subpart C—Miscellaneous Provisions

* * * * *

Evidence of Exportation and Use

Sec.

252.40 Evidence of Exportation: distilled spirits and wine.

252.41 Evidence of lading for use on vessles or aircraft: distilled spirits and wine.

* * * * *

252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

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Subpart D—Bonds and Consents of Surety

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252.60 Brewer's bond, Form 5130.22.

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Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

252.141 General.
252.142 Notice, Form 1689.
252.143 Containers.
252.144 Export marks.
252.145 Consignment, shipment and delivery.
252.146 Disposition of forms.
252.147 Return of beer or beer concentrate.
252.148 Brewer's report.
252.149 Losses.
252.150 Charges and credits on bond.

Subpart Ga [Removed]

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Subpart N—Proceedings at Ports of Export

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Alternate Procedures

252.295 Exception for export of beer.

Subpart O—Losses

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Beer and Beer Concentrate

252.320 Loss of beer and beer concentrate in transit.

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Par. 7. Section 252.3 is revised by updating the part number for Part 245. As revised, § 252.3 reads as follows:

§ 252.3 Related regulations.

Regulations relating to this part are listed below:

19 CFR Chapter I—Customs Regulations
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 21—Formulas for Denatured Alcohol and Rum
27 CFR Part 25—Beer
27 CFR Part 30—Gauging Manual
27 CFR Part 194—Liquor Dealers
27 CFR Part 231—Taxpaid Wine Bottling Houses
27 CFR Part 240—Wine
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety of Sureties on Penal Bonds

Par. 8. Section 252.11 is amended by changing the citation for Part 245 to Part 25 in the definition of "brewery." As revised, the definition reads as follows:

§ 252.11 Meaning of terms.

* * * * *

Brewery. Premises established under Part 25 of this chapter for the production of beer.

* * * * *

Par. 9. Section 252.40 is amended by changing the section title and by making a similar change in the first sentence. As revised, the section heading and the introductory text of § 252.40 read as follows:

§ 252.40 Evidence of exportation: distilled spirits and wine.

The exportation of any shipment of distilled spirits or wine may be evidenced by:

* * * * *

Par. 10. Section 252.41 is revised by adding distilled spirits and wine to the section title, and by deleting beer from the text of the section. As revised, § 252.41 reads as follows:

§ 252.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

The lading of distilled spirits or wine for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 252.268.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859; 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

Par. 11. A new § 252.43 is added giving evidence of exportation and use on vessels and aircraft for beer only. As added, § 252.43 reads as follows:

§ 252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

(a) *Exportation.* The exportation of beer to a foreign country or possession will be fully evidenced by any of the following documents:

(1) Customs certification of lading and clearance on Form 1582–B or Form 1689 under Subpart M of this part; or

(2) For shipment to the armed forces, certification by a military officer on Form 1582–B or Form 1689 under § 252.275; or

(3) A bill of lading (§ 252.250), a railway express receipt (§ 252.251), or an air express or air freight bill of lading (§ 252.252), when such bills of lading or receipt show exportation to a foreign country or possession; or

(4) A certificate issued by an export carrier under § 252.253 attesting to exportation to a foreign country or possession; or

(5) A landing certificate issued by an official of the country or possession where the beer has actually landed; or

(6) Any other evidence of exportation approved by the regional director (compliance).

(b) *Use as supplies on vessels and aircraft.* The lading of beer for use on vessels or aircraft will be fully evidenced by:

(1) For fishing vessels only, customs certification of lading and use on Form 1582–B or Form 1689 under § 252.23; or

(2) Customs certification of lading on Form 1582–B or Form 1689 under §§ 252.264 or 252.282; or

(3) Any other evidence of exportation approved by the regional director (compliance).

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5055))

§ 252.51 [Amended]

Par. 12. Section 252.51 is amended by changing the reference to Part 245 to read Part 25 in the last sentence of the section

Par. 13. Section 252.60 is revised by changing the brewer's bond number, the part number, and by deleting the proviso. As revised, § 252.60 reads as follows:

§ 252.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in § 252.141, the brewer's bond, Form 5130.22, furnished under the provisions of Part 25 of this chapter will cover the removals.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

Par. 14. Subpart G is revised by incorporating into it the provisions of Subpart Ga relating to the exportation of beer concentrate. As revised, Subpart G reads as follows:

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

§ 252.141 General.

(a) *Beer.* Beer may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country;

(2) Use as supplies on the vessels and aircraft described in § 252.21; or

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(b) *Beer concentrate.* Concentrate, produced from beer under the provisions of Subpart R of Part 25 of this chapter may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country; or

(2) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(c) *Bond.* All removals of beer or beer concentrate will be made by the brewer under the provisions of the brewer's bond, Form 5130.22 as prescribed in § 252.60.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.142 Notice, Form 1689.

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 for each withdrawal. The brewer shall execute Form 1689 in quadruplicate, except when the shipment is for use on aircraft the brewer shall execute an extra copy which will be marked "Consignee's Copy."

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.143 Containers.

(a) *Beer.* Beer being exported, used as supplies on vessels and aircraft, or transferred to and deposited in a foreign-trade zone, without payment of tax, may be removed in bottles, kegs, or bulk containers.

(b) *Beer concentrate.* Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 252.144 Export marks.

(a) *General Requirement.* In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of Part 25 of this chapter, the brewer shall mark the word "Export" on each container or case of beer, or the words "Beer concentrate for export" on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) *Exceptions.* A brewer need not apply the mark "Export" on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.145 Consignment, shipment and delivery.

The consignment, shipment and delivery of beer or beer concentrate removed from a brewery without payment of tax under this subpart will be in accordance with the applicable provisions of Subpart M of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 to the regional director (compliance), retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy," provided for in § 252.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to be brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in § 252.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 returned by the district director of customs, "Canceled—Returned to Brewery," and forward one copy to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

§ 252.148 Brewer's report.

The brewer's records shall reflect the quantity of beer or beer concentrate removed without payment of tax under this subpart, and the brewer shall report the quantity of beer or beer concentrate so removed on Form 5130.9. The total quantity of beer or beer concentrate involved in all export shipments returned during any calendar month will be reported as a separate entry on Form 5130.9.

(Approved by the Office of Management and Budget under control number 1512–0052.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.149 Losses.

When there has been a loss of beer or beer concentrate while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of Subpart O of this part, with respect to losses are applicable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

§ 252.150 Changes and credits on bond.

The removal of beer concentrate from the brewery without payment of tax under this subpart will constitute a charge against the brewer's bond, Form 5130.22, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. The satisfactory accounting for concentrate so removed will constitute a credit to the bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Par. 15. Subpart Ga is removed.

§ 252.223 [Amended]

Par. 16. Section 252.223 is amended by changing the reference to Part 245 to read Part 25.

Par. 17. A new center headnote following § 252.290, and a new § 252.295 are added to Subpart N, which relieves brewers or exporters from obtaining customs certification on Forms 1582–B or 1689 when other proof of exportation is submitted. As added, the undesignated center headnote and § 252.295 read as follows:

Alternate Procedures

§ 252.295 Exception for export of beer.

The provisions of this subpart do not apply in the case of beer when the exporter or claimant obtains proof of exportation other than certification by the military or customs certification of lading and use under § 252.43. Brewers and exporters shall prepare Forms 1582–B or 1689, as applicable, to cover exportation of beer, but customs or military certification on them is not required when other proof of exportation is used.

Par. 16. The undesignated center headnote between § 252.318 and § 252.320 is changed from "BEER" to read "BEER AND BEER CONCENTRATE".

Par. 17. Section 252.320 is revised by expanding coverage of the section to include beer concentrate and by making editorial changes. As revised, § 252.320 reads as follows:

§ 252.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the regional director (compliance) of Form 1689 from the officer required to certify it under the provisions of Subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the regional director (compliance) will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the regional director (compliance) will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the regional director (compliance) will afford the brewer opportunity to submit a written explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

Par. 18. Section 252.321 is revised by expanding coverage of the section to include beer concentrate. As revised, § 252.321 reads as follows:

§ 252.321 Tax assessed on loss not accounted for.

The regional director (compliance) shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on: (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Signed: April 25, 1985.

Stephen E. Higgins,

Director.

Approved: September 20, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86–4369 Filed 3–4–86; 8:45 am]

BILLING CODE 4810–31–M

Federal Register

Wednesday
March 5, 1986

Part III

Department of Energy

Western Area Power Administration

Sacramento Area Office; Central Valley Project; Final Withdrawal Procedures; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Sacramento Area Office; Central Valley Project Withdrawal Procedure

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Final Withdrawal Procedures.

SUMMARY: The Sacramento Area Office of the Western Area Power Administration (Western) is issuing this notice of final procedures for withdrawal of Central Valley Project (CVP) power allocations from its customers under varying circumstances. This notice also contains final criteria governing the allocation and service of power to preference customers in Trinity, Tuolumne, and Calaveras Counties with statutory first preference rights to CVP power.

This proceeding is being conducted by Western for the purpose of developing and clarifying methods of withdrawal of CVP power from customers under circumstances prescribed by law or by contract. For further information regarding the specific circumstances prescribed by law or contract, and the procedures and their alternatives, see the **Federal Register** notice dated January 16, 1985 (50 FR 2502, January 16, 1985), and the **Federal Register** notice dated August 16, 1985 (50 FR 33314, August 16, 1985).

As discussed in the Responses to Customer Comments section of this notice, several customers have filed suit over an interpretation of the Santa Clara Settlement. Pending resolution of that dispute, Western will not withdraw under these procedures the purportedly "nonwithdrawable" power from those customers that are parties to the Santa Clara Settlement.

ADDRESS: For further information concerning this notice contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, Phone: (916) 978–4418.

Summary of Customer Comments and Illustrative Examples.—Western has prepared a booklet of examples illustrating the execution of the Final Withdrawal Procedures. This booklet will be mailed to all customers and interested parties. This booklet will also be made available upon request. Such requests may be in writing or by phone to the address given above.

Final Procedures

1. Explanation of Terms

1.1 *Anniversary Date* means the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the Counties of Origin. The next Anniversary Date for First Preference Customers in Trinity County is January 1, 1987, and for First Preference Customers in Tuolumne and Calaveras Counties is April 5, 1987.

1.2 *Annual Average Generation* when used in reference to the entitlements of First Preference Customers means the average output of the plants located in the Counties of Origin as presented in Western's official planning forecast (see procedure 3.2, definition of variable A).

1.3 *Average Annual Load Factor or AALF* means the average of the most current 12 monthly load factors available, preceding the determination of the Maximum Entitlement of First Preference Customers.

1.4 *Project Auxiliary Service* for the purpose of these procedures, means power, other than Project Use, required to meet the needs of the CVP for such purposes as station service, plant load, lighting, station office loads, and other purposes, as determined by the United States, necessary for supporting the operations of the CVP. This power is deducted from gross generation prior to determining the amount of power available for project pumping and preference sales.

1.5 *Contract 2948A or 2948A* means Contract No. 14–06–200–2948A, dated July 13, 1967, between Western and the Pacific Gas and Electric Company (PGandE) as amended, supplemented, replaced, or superseded.

1.6 *Contract Rate of Delivery or CRD* means the amount of capacity committed to a contractor pursuant to power sales contracts between Western and such contractor to provide firm electric power from the CVP.

1.7 *Counties of Origin* means Trinity, Calaveras, or Tuolumne Counties.

1.8 *Diversity Allocation* means allocations of CVP power made in accordance with the Power Marketing Plan of 1981 and sold pursuant to Diversity Contracts.

1.9 *Diversity Contracts* means those contracts with the National Aeronautics and Space Administration–Ames Research Center (NASA–Ames) and the Department of Energy (DOE) Laboratories providing for additional CVP allocations to such customers in exchange for their participation in Western's load control program.

1.10 *Firm CRD* means any power sale described herein which is not referred to as a Diversity Allocation, Renewable Resource Allocation, Type I Withdrawable Power, Type II Withdrawable Power, or Westlands Water District (Westlands) Withdrawable Power.

1.11 *First Preference Customers* means those CVP customers in either Trinity, Tuolumne, or Calaveras Counties, as the case may be, which have satisfied the statutory requirements according to Reclamation law for a right to power service of up to 25 percent of the additional power made available from the CVP power system as a result of the construction of the Trinity Division of the CVP or the New Melones Powerplant and their integration with the CVP.

1.12 *Load Level* means the maximum allowable simultaneous demand for power during any month of all of those CVP customers whose CRDs are designated as contributing to the simultaneous demand.

1.13 *Maximum Entitlements of First Preference Customers (MEFPC)* means the maximum amount of power which is available to satisfy the rights of First Preference Customers. Such amounts will be calculated for preference customers located in Trinity County, and separately for preference customers located in Calaveras and Tuolumne Counties.

1.14 *Maximum Entitlement of Westlands* means the maximum amount of CRD which is available to satisfy Westlands' contract rights to preference power. Currently this amount is 50 MW, but is subject to reduction as provided herein.

1.15 *Maximum Simultaneous Demand or MSD* means the maximum level of simultaneous customer demand for power of preference customers of the CVP at the 1,152–MW load level, adjusted for losses to the CVP load center, in accordance with the provisions of Contract 2948A and the Santa Clara Settlement.

1.16 *Power Marketing Plan of 1981* means that Power Marketing Plan created to market the additional 102 MW of MSD made available as a result of the Santa Clara Settlement (46 FR 51224, October 16, 1981).

1.17 *Project Use*, for the purposes of these procedures, means the power from the CVP required to operate the pumping facilities of the CVP. As such, this definition refers only to the pumping aspects of the CVP and does not include the power required to fulfill the other needs of the project (see the definition for Project Auxiliary Service).

1.18 *Renewable Resource Allocation* means allocations of CVP power made in accordance with the 1981 Power Marketing Plan and sold pursuant to Western's Renewable Resource Contracts.

1.19 *Renewable Resource Contracts* means those contracts with Western customers providing Renewable Resource Allocations in exchange for renewable resource or cogeneration development by the customer.

1.20 *Santa Clara Settlement or MOU* means the Memorandum of Understanding among Western, PGandE, the City of Santa Clara, and other CVP customers, dated February 8, 1980, providing for settlement of issues raised in the case of the *City of Santa Clara* v. *Andrus*, 572 F. 2d 660 (9th Cir.), cert. denied, 439 U.S. 859 (1978), and for PGandE's agreement to allow Western the option of increasing the load level from 1,050 MW to 1,152 MW.

1.21 *Type I Withdrawable Power or Type I* means that portion of a customer's CRD which may be reduced by Western to maintain the 925-MW load level.

1.22 *Type II Withdrawable Power or Type II* means the 60-MW portion of the City of Santa Clara's CRD which may be reduced by Western to maintain the 1,050-MW load level pursuant to the Santa Clara Settlement.

2. Withdrawals to Serve Project Use—Under Western's existing contract with PGandE, its imports from the Northwest, and the low growth rate of Project Use, there is no immediate need to withdraw power for Project Use. Therefore, at this time, Western will not be formulating procedures for withdrawals to serve Project Use. Such procedures will be promulgated when the need for Project Use withdrawals arises.

3. Allocations to First Preference Customers

3.1 Western will serve the First Preference Customers from the capacity available under the 1,152-MW load level. Withdrawals of power required to provide such service will be as provided in sections 4 and 6 herein.

3.2 MEFPC is an annual number, which can vary from year to year, and is determined for each year of a 5-year period in advance, once every 5 years, in accordance with the following formula:

MEFPC=(A−L−P)*0.25

Where:

A—The Annual Average Generation of the plants in the Counties or Origin taken from the Western Long-Term Annual Average Generation Study (AAGS) done for the Power Repayment Study. The AAGS used shall be the most recent AAGS available prior to the Anniversary Date in the respective County or Counties of Origin.

L—Transmission losses from generation to the CVP load center (currently 4 percent).

P—Project Use Withdrawals apportioned to the New Melones or Trinity River Division (since Project Use Withdrawals have been delayed, P is currently equal to zero).

3.3 CRD requested by First Preference Customers will be converted to an energy entitlement by multiplying the requested CRD by the AALF of the First Preference Customer and the number of hours in the year (8,760) and then adjusting for losses to the CVP load center (AALF*CRD*8,760+losses from point of delivery to the CVP load center). The entitlement so determined will be used to award allocations to requesting First Preference Customers. To convert an entitlement to a CRD, the entitlement will be reduced for losses to the delivery point(s), and the result divided by the product of the AALF and 8,760.

3.4 All requests for allocations shall not exceed the peak demand experienced prior to the date of the request or the estimated peak for the year in which the request is made. Western reserves the right to reduce any request which in Western's opinion is unreasonable.

3.5 If the request(s) of First Preference Customers for power becomes greater than the MEFPC, then Western will distribute the remaining entitlement in the following fashion, unless otherwise agreed among Western and all affected First Preference Customers:

3.5.1 An attempt will be made to first meet the request of First Preference Customers not previously allocated a share of the entitlement before any of the remaining entitlement is distributed in accordance with the formula in 3.5.2.

3.5.2 The remaining entitlement will be distributed among the requesting First Preference Customer(s) in accordance with the following formula:

CE=(IR/TR)*RE

Where:

CE—Customer entitlement rounded to the nearest kWh then converted to a CRD in accordance with procedure 3.3.

IR—Individual amount (CRD) requested by a First Preference Customer (converted to an entitlement in accordance with procedure 3.3, and subject to the conditions of 3.4).

TR—Sum total of all of the IR's.

RE—Amount of the MEFPC remaining (not allocated).

3.5.3 Power allocated to First Preference Customers in Tuolumne and Calaveras Counties will be subject to the following additional conditions:

3.5.3.1 Each county shall use New Melones power only to the extent that its permanent use shall not cause the total amount in that county to exceed one-half of the power allocated by Western.

3.5.3.2 If Preference Customers in one county are not utilizing its full one-half share and a Preference Customer in the other county has need of power, which would cause the other county to exceed its one-half share, then Western will allocate such power on a withdrawable basis to the requesting customers. Such power may be withdrawn for use by a qualified first preference customer in the county not utilizing the full one-half share after notice is given pursuant to 3.5.3.3 below.

3.5.3.3 If Western is required to withdraw power allocated in accordance with 3.5.3.2 above, Western will notify such customer as soon as practicable in writing after the receipt of a request for a return of power allocation, in accordance with 3.6 below.

3.6 A First Preference Customer may request an increase in CRD by notifying Western in writing at least 6 months in advance of the month in which the increase is to be effective (increases in CRDs are effective the 1st day of a month). All such requests will be subject to the conditions of 3.4 and 3.5 above.

3.7 The MEFPCs will be redetermined once every 5 years using the AAGS (referred to as the "original AAGS") presented in 3.2 above. If the MEFPC determined from any subsequent AAGS, during the 5-year period, is less than 90 percent or greater than 110 percent of the MEFPC determined from the original AAGS, then Western reserves the right to redetermine the MEFPC based upon the new AAGS.

3.7.1 Should Western choose to redetermine the MEFPC and all of the MEFPC has been allocated, then the allocations of CRDs to the First Preference Customers will be adjusted in accordance with the following formula:

New CRD=(MEFPC/TE)*Old CRD

Where:

CRD=Contract Rate of Delivery

TE=Summation of the energy entitlements of the First Preference Customers in the County or Counties of Origin calculated as the sum of:

AALF*Old CRD*8,760+losses (to the CVP load center).

3.7.2 Should Western decide to change the MEFPC, then Western will inform the affected First Preference Customers of the change in the MEFPC and any resultant changes in their CRDs in writing at least 6 months in advance.

3.8 The CRDs of First Preference Customers, determined in accordance with the above procedures and by application of Reclamation law are not withdrawable for load level withdrawals.

3.9 First Preference Customers may reduce their CRDs upon 6-months' written notice to Western (subject to the provisions of Article 14(b) of Contract 2948A), unless otherwise agreed by Western.

3.10 All power sales to First Preference Customers are subject to the availability of facilities or the execution of contracts necessary, as determined by Western, to provide for the sale and delivery of CVP power.

3.11 The contract of any First Preference Customer which does not reflect the provisions of these procedures will be modified to be in accordance with these procedures prior to granting any increase in CRD to such First Preference Customer.

4. Withdrawals To Serve the Rights of First Preference Customers

4.1 First Preference Customer withdrawals, under this section 4, will be made only for First Preference Customers in Tuolumne and Calaveras Counties. Such withdrawals shall be initiated as a result of a 1,152–MW load level withdrawal.

4.2 Withdrawals to serve the rights of First Preference Customers in Tuolumne and Calaveras Counties will be made from the Firm CRD of the customers subject to such withdrawal.

4.3 CRD allocated to Westlands is withdrawable to serve the rights of First Preference Customers. Such withdrawals will reduce the entitlement of Westlands, and will necessitate a Westlands Withdrawal (see section 5).

4.4 Should a First Preference Customer withdrawal become necessary (as the result of a 1,152–MW load level withdrawal), then withdrawals will be made in accordance with the following formula:

WD=A*(P/SP)

Where:

WD—The amount to be withdrawn from the customer's CRD (rounded up to the nearest kW).

A—The total amount of CRD withdrawn for First Preference Customers in Tuolumne and Calaveras Counties as a result of a 1,152-MW load level withdrawal.

P—The total CRD of the customer.

SP—The sum of all the customer Ps.

4.5 The formula given in 4.4 will be repeated, as necessary, until the sum of the WDs is greater than or equal to A. Withdrawals of CRD made pursuant to this section 4, to satisfy the rights of the First Preference Customers, will be subject to the limitations of procedures 6.4 and 6.5.3.

4.6 Should a withdrawal become necessary, Western will notify the affected customers at least 17 months in advance of such withdrawals. Notification of a pending 1,152-MW load level withdrawal will constitute notification of a pending First Preference Customer withdrawal.

4.7 There will be no separate reinstatement of power withdrawn to serve a First Preference Customer.

5. Withdrawals To Serve Westlands Water District

5.1 For the term of its CVP power sales contract and for the purposes specified in such contract, Westlands is entitled to increase its CRD up to a total CRD of 50 MW, except as reduced by withdrawals described in these procedures.

5.2 Only those customers receiving allocations of Westlands Withdrawals Power, as a result of the Power Marketing Plan of 1981, are subject to Westlands withdrawals. The amount of power allocated to such customers was determined in the following fashion:

WW=(TWWA/(TOACRD—10 MW))*OCRD
=0.7138*OCRD

Where:

WW—The Westlands withdrawable portion of a customer's CRD.

TWWA—The original entitlement of Westlands (50 MW) less Westlands CRD as of January 28, 1982 (41.4 MW).

TOACRD—Total of the original allocations to those customers with Westlands Withdrawable Power (68 MW).

OCRD—Original customer allocation of power from the Power Marketing Plan of 1981 less 0.5 MW.

5.3 Westlands Withdrawable Power will be reduced to satisfy the needs of Westlands Water District as a result of a request for an increase in CRD from Westlands, as the result of a First Preference Customer withdrawal, or as a result of a 1,152–MW load level withdrawal.

5.4 Should a withdrawal be necessary, withdrawable will be made in accordance with the following formula:

WD=A*(WW/WWS)

Where:

WD=Amount of Westlands withdrawals CRD to be deducted from a customer's CRD (rounded up to the nearest kW).

A—Total amount of CRD to be withdrawn.

WW—The Westlands Withdrawable Power of a customer prior to the withdrawal.

WWS—The sum of the WWs of all of the customers.

5.5 Western will notify the affected customers at least 90 days in advance in writing of any pending withdrawals. Notice of a pending 1,152—MW load level withdrawal will constitute notification of a pending Westlands withdrawal.

5.6 Should Westlands Withdrawable Power become available for reinstatement, it shall be reinstated in accordance with section 7 of these procedures.

6. Load Level Withdrawals

6.1 In any month in which a load level is exceeded, Western will withdraw power according to the procedures described below.

6.2 Withdrawals at the 925– and 1,050–MW load levels will be completed before any withdrawals are made at the 1,152–MW load level. Western does not anticipate changing the procedures currently used to withdraw at the 925– and 1,050–MW load levels.

6.3 All withdrawals of power at the 1,152–MW load level will be made from a customer's Firm CRD (as provided in procedure 6.5 below).

6.4 No customer's Firm CRD will be reduced below 0.5 MW, unless, as determined by Western, such reduction is necessary to comply with Reclamation law.

6.5 Withdrawals of CRD to satisfy the 1,152–MW load level limit will be made in the following order:

6.5.1 Type I Withdrawable Power (as a result of a 925–MW withdrawal).

6.5.2 Type II Withdrawable Power (as a result of a 1,050–MW load level withdrawal).

6.5.3 Twenty percent of a customer's Firm CRD, unless otherwise specified by contract.

6.6 Should the 1,152–MW load level be exceeded, then Western will withdraw power from its customers using the following formula:

WD=A*(C/MSD)

Where:

WD—Amount of CRD to be withdrawn from a customer (rounded up to the nearest kW).

A—Total amount to be withdrawn (MSD—1,152 MW).

C—The contribution of the customer to the MSD.

MSD—The Maximum Simultaneous Demand of the Western system at the 1,152–MW load level (should equal the sum of the Cs).

6.7 The formula given in 6.6 will be repeated as necessary, until the sum of the Cs (redetermined after withdrawal) is less than or equal to 1,152 MW.

6.8 First Preference Customers in Trinity, Tuolumne, and Calaveras Counties are not subject to load level withdrawals. First Preference Customers in Tuolumne and Calaveras Counties will be included in the 1,152–MW load level withdrawals, necessitating a First Preference Customer withdrawal, immediately following the 1,152–MW load level withdrawal, to restore the power withdrawn from the customers in Tuolumne and Calaveras Counties. This withdrawal will be subject to the terms and conditions of section 4 of these procedures.

6.9 Following the withdrawal for First Preference Customers, a Westlands withdrawal will be made, as required, to serve the needs of Westlands Water District. This withdrawal will be subject to the terms and conditions of section 5 of these procedures. The amount of CRD to be withdrawn will be the sum of the amount withdrawn from Westlands to serve the needs of the 1,152–MW load level, and the needs of the First Preference Customers in Tuolumne and Calaveras Counties.

6.10 If, during the 12 months following a withdrawal to meet the 1,152–MW load level, there have been no such additional withdrawals, CRDs which have been reduced to meet the 1,152–MW load level will be reinstated effective on the 1st day of the 13th month following the month of withdrawal, subject to any agreement determined by Western to be necessary with PGandE prior to such reinstatement. Power reinstated will be subject to the terms and conditions of section 7 of these procedures.

6.11 Western will engage in a load monitoring system and will promote its own and customer load control programs to minimize withdrawals of power. In this regard, Western will provide incentives (including rate discounts and possible early reinstatements of power) for load management and control for customers which materially contribute (as determined by Western) to Western's programs.

6.12 Western reserves the right to include the First Preference Customer loads in that load level which will minimize withdrawals from all of its customers.

Reinstatement of Power

7.1 Except as provided in procedures 7.2 through 7.4, all reinstatements will be made in accordance with the following formula:

$AR = A^{*}(AW/SAW)$

Where:

AR—Amount of CRD to be reinstated to the customer.
A—Total amount of CRD or power to be reinstated.
AW—Amount of CRD withdrawn from the customer prior to reinstatement.
SAW—Sum of the AWs.

7.2 The amount of power to be reinstated for a 1,152–MW load level reinstatement will be the difference between the highest Maximum Simultaneous Demand during the 12-month period following the month of withdrawal and 1,152 MW or the total amount withdrawn to date, whichever is less. The amount withdrawn (AW) will include withdrawals made to serve the rights of First Preference Customers.

7.3 The ARs which result from the computation presented in procedure 7.1 will be rounded up to the nearest kW and the computation will be repeated until the difference between the MSD and 1,152 MW equals zero or until no further reinstatements can be made without causing the MSD to exceed 1,152 MW.

7.4 The amount of power to be reinstated for a Westlands Withdrawable Power reinstatement will be the amount of CRD returned to Western by Westlands, the amount of the entitlement returned to Westlands as a result of a 1,152–MW load level reinstatement, or the amount withdrawn, whichever is less.

7.5 The final ARs resulting from the computation presented in procedure 7.1 will be rounded down to the nearest kW to ensure that the sum of the reinstated CRDs is less than or equal to the amount to be reinstated (the sum of the ARs is less than or equal to A).

7.6 Western reserves the right to deny any reinstatement of power if in Western's opinion circumstances warrant such denial.

SUPPLEMENTARY INFORMATION:

Following is a statement of rationale for each of the final procedures:

Procedure 2: Under Contract 2948A, it is not necessary for Western to make Project Use withdrawals. This is because Project Use and Project Auxiliary Service are first supplied from the project facilities, and the remaining CVP hydrogeneration is available for serving Preference Customer loads. The deficiency, if any, between the supported customer load and the hydrogeneration is purchased from PGandE or other resources. The net impact of an increase in Project Use is an increase in purchases rather than a reduction in the load served. In addition, current Bureau of Reclamation forecasts show little growth in project loads. Therefore, Western does not anticipate making Project Use withdrawals. If it should appear that Project Use withdrawals may be required, Western will develop appropriate procedures at that time.

Procedure 3.1: Western has selected this procedure for dealing with the First Preference Customer withdrawals as a means of distributing the benefits of Federal power to the greatest extent possible, while minimizing and equitably sharing the impact of withdrawals on all customers.

Procedure 3.2: Western has interpreted the phrase, "additional electric energy," as it appears in Reclamation law, to mean the average gross output of the plants in the County or Counties of Origin less the plant's share of Project Use and Project Auxiliary Service (realistically this is all that is available to serve any preference customer since the needs of the project take precedent over preference power sales). In addition, since CRDs are allocated at delivery point and not at the generator, the sale of power to preference customers, via a CRD allocation, must be adjusted for the losses required to get the power from the generator to the point of delivery. Consequently, Western has selected Alternative 1 of the entitlement formulas as the means of determining the magnitude of the First Preference Customer allocations. However, recognizing that other preference allocations are not reduced for the effects of increased Project Use, Western has decided to extend this feature of its Power Marketing Program to the First Preference Customers (since they pay for it in Western's rates). Doing so will require that the MEFPC be reduced if and when Project Use withdrawals are required. Consequently, the P in Alternative 1 has been defined as the Project Use withdrawals apportioned to the plants located in the Counties of Origin. The exact details of the apportionment will be part of any future procedures developed to deal with Project Use withdrawals.

Western has rejected Alternative 2 because it does not embody Western's interpretation of the phrase "additional electric energy," nor does it take into account the circumstances related to the delivery of power from the generator to the customer.

Western has rejected Alternative 3 because it would base the entitlement and subsequent allocations of First Preference Customer power on a percentage of total power sold by the CVP as integrated with PGandE under Contract 2948A. Western does not believe that this method was intended by the First Preference Customer statutes because the entitlement is not just based upon the contribution to the CVP of the specified units. An entitlement so determined would include, within its basis for determination, diversity in the system (a portion of which is there as a result of Western's load monitoring program), unused allocations of other customers, and the conservation efforts of Western's other customers (which includes but is not limited to direct conservation efforts, high-side metering expenditures, and the conversion of some customer receiving systems to voltages higher than 44 kV or direct service). Such a basis for determination of the MEFPC is in Western's opinion not consistent with the intent of Reclamation law, or equitable to the other customers. See discussion of Alternatives 1, 2, and 3 in the **Federal Register** notice dated January 16, 1985 (50 FR 2502, January 16, 1985).

Procedure 3.3: The MEFPC is determined at the CVP load center. To convert the MEFPC to a CRD to be applied at a customer's point(s) of delivery will require that the MEFPC be adjusted for losses from load center to the point(s) of delivery. Since these losses and customer load factors may vary among First Preference Customers, the MEFPC might not be convertible to a CRD. It is the intent of these proceedings that the summation of all the First Preference Customer CRDs (in a County or Counties of Origin) converted to an entitlement in accordance with procedure 3.3 shall not exceed the MEFPC for the County or Counties of Origin.

Procedure 3.4: Western recognizes that there may be some incentive to overstate load projections to obtain the remaining MEFPC to exclusion of other First Preference Customers. To preclude this from happening, Western will examine all requests for reasonableness by comparing them against historical peaks, adjusted for reasonable growth based on historical growth patterns, and further adjusted for anticipated huge increases in load (such as sudden industrial growth or annexations). Should the customer's request exceed Western's estimate of the customer's load, Western will reduce such customer's request to match Western's estimate of that customer's load.

Procedure 3.5.1: Western's "wide spread use policy" dictates that Western consider, to the extent possible, allocating First Preference Customer power to those qualifying entities which do not possess an allocation. The inclusion of procedure 3.5.1 implements this policy.

Procedure 3.5.2: This procedure recognizes that at some point in time, the requests for First Preference Customer power may exceed the available power. This procedure distributes the remaining power in accordance with the needs of the customers (i.e., their requests).

Procedure 3.5.3: Based upon the comments and requests of Tuolumne and Calaveras Counties, Western is including this provision in its final procedures for withdrawals. Western recognizes and supports the desire of the two counties to have the MEFPC split equally between First Preference Customers within the counties. However, Western must emphasize that the responsibility for making allocations is Western's, and if First Preference Power is available, Western cannot deny an allocation to a qualified First Preference Customer (though it may be willing to allocate power on a withdrawable basis), nor support the idea that one First Preference Customer within a county has greater rights to preference power than another First Preference Customer. Western considers this rule responsive to the comments received from the counties.

Procedure 3.6: Six-months' notice should give Western sufficient time to evaluate each customer request and allocate additional CRD based upon the customer request.

Given the uncertainty in forecasting loads, Western recognizes that actual loads may exceed requested allocations. If the customer does not posess a contract with an auxiliary supplier for the additional load, or if the unauthorized overrun is small, Western will generally (with PGandE's concurrence) agree to serve the unauthorized overrun at 10 times the applicable CVP power rates. Should this situation occur, the customer will be responsible for initiating an immediate request for an increase in CRD in accordance with Western's procedure 3.6.

Procedure 3.7: Western believes that determining the MEFPC in advance for an extended period will make the administration of the First Preference Customer allocations easier. The 5-year period was chosen to coincide with the opening of the statutory window for serving new First Preference Customers.

The 10-percent provision was included to ensure that the First Preference Customers, as well as Western's other customers, are protected from adverse conditions not anticipated in the AAGS.

Procedure 3.8: First Preference Customers are entitled up to a fixed percentage of the additional output of the powerplants in the Counties of Origin by Reclamation law. Since this entitlement can only be reduced to meet the needs of the project, a load level withdrawal would only reduce a First Preference Customer's current allocation. The resulting lost allocation could be immediately requested by the First Preference Customer, returning its CRD to the before-withdrawal magnitude. The ultimate result is that the load level withdrawal would have no impact on the CRD of the First Preference Customers. Therefore, Western will not subject First Preference Customers to a load level withdrawal.

Procedure 3.9: Western believes that 6-months' advance notice will be sufficient time to process the reduction and modify its billing records accordingly. Given the manner in which Western is triggering its First Preference Customer withdrawals, it will not be reinstating any power returned by a First Preference Customer. Such returns will be used to serve the loads of the customers at the 1,152–MW load level, which may or may not be reinstated depending upon the MSD at that load level.

Procedure 3.10: As with other power sales contracts, sales of power to First Preference Customers are dependent upon the availability of facilities to deliver the power. To the extent that the availability of facilities is dependent upon the existence of additional contracts, then the sale of power to First Preference Customers will depend upon the existence of such contracts.

Procedure 3.11: Contractual changes might be required to implement these procedures with respect to some First Preference Customers. Western will not grant any increases in CRD to such First Preference Customers until the power sales contract of that customer has been modified to reflect the provisions of these procedures.

Procedure 4.1: First Preference Customers are guaranteed by Reclamation law up to 25 percent of the additional output made available to the CVP by the integration of the generating plants in the Counties of Origin into the CVP. Since this quantity is fixed once

the MEFPC has been determined, it is not subject to withdrawal for load level, or to serve the loads of other First Preference Customers. As a consequence of this fact, a load level withdrawal (1,152–MW load level withdrawal) will, through the computational process of determining an amount to be withdrawn from each customer, reduce the amount of CRD allocated to a First Preference Customer, precipitating a First Preference Customer withdrawal to restore the withdrawn CRD. Because the customer group for a First Preference Customer withdrawal to serve preference customers in Trinity County is the same as the customer group for a 1,152–MW load level withdrawal, a First Preference Customer withdrawal for preference customers in Trinity County can be eliminated by excluding First Preference Customers in Trinity County from the 1,152–MW load level withdrawal. However, since Sacramento Municipal Utility District (SMUD) is not subject (by contract) to withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties, the customer group for the 1,152–MW load level withdrawal and a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties is not the same, and therefore, a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties will have to be initiated each time there is a 1,152–MW load level withdrawal.

Procedure 4.2: First Preference Customers in Trinity are exempt from withdrawal and SMUD currently has a contract exemption from withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties.

Procedure 4.3: A Westlands withdrawal will be necessary only to the extent that Westlands' entitlement exceeds its CRD. Prior to that time, any withdrawal of CRD from Westlands will result in a request from Westlands for additional CRD from their entitlement, forcing a Westlands withdrawal. The net effect of this whole process is that each time there is a First Preference Customer withdrawal, there will be a subsequent Westlands withdrawal, and the amount of Westlands CRD to be withdrawn will equal the amounts of CRD withdrawn from Westlands to serve the rights of the First Preference Customers.

Procedure 4.4: Western believes that, with respect to First Preference withdrawals, every customer subject to such withdrawals should share equally in the withdrawals in accordance with the amount of CRD allocated to such customer. To allocate such withdrawals on the basis of contribution to the MSD would be to unfairly burden those customers contributing the most to the MSD with an inordinate share of the amount of power to be withdrawn to serve the First Preference Customers.

Procedure 4.5: Because the 0.5–MW limitation (see procedure 6.4) on withdrawal is not removed prior to the computations, multiple iterations of the formula in procedure 4.4 may be required to complete the withdrawal.

Procedure 4.6: Since Western expects that sometime within the next 18 to 24 months the Western system will be capable of exceeding the 1,152–MW load level limit at any time, necessitating a 1,152–MW load level withdrawal, First Preference Customer withdrawal, and a Westlands withdrawal, Western issued a notice to all CVP customers of pending withdrawals on May 31, 1985, to be effective 17 months from the date of the letter and remain effective until the expiration of most contracts in the year 2004.

The 17-month notice period is consistent with the longest notification period in any of Western's customer power sales contracts.

Procedure 4.7: Since reductions in CRD by First Preference Customers either will not affect the MSD or will be manifested in a reduced MSD, and possibly a reinstatement of power at the 1,152-MW load level, Western will not separately reinstate withdrawals of power for First Preference Customers.

Procedure 5.1: See Supplementary Information procedure 4.3.

Procedure 5.2: Since Western's position is that no customer shall have its CRD reduced below 0.5 MW, and because some of Western's customers have CRDs equal to 0.5 MW, the 0.5 MW is Firm CRD and must be removed from a customer's CRD prior to determining the amount of Westlands Withdrawable Power included in a customer's CRD. This adjustment is reflected in the 10 MW (20 customers *0.5 MW) subtraction from the total of the original allocations of Westlands unused entitlement under the Power Marketing Plan of 1981 in the formula presented in procedure 5.2.

Procedure 5.3: Self explanatory.

Procedure 5.41: The application of the formula is straightforward. The results are rounded up to ensure that sufficient entitlement is recovered from the allocations of Westlands Withdrawable Power to satisfy the needs of Westlands Water District.

Procedure 5.5: The 90-day advance notice provision is consistent with the longest period required by all of Western's power sales contracts.

Procedure 5.6: Refer to procedure 7.4.

Procedure 6.1 and 6.2: Western reserves the right to change the procedures for withdrawing at the 925- and 1,050-MW load levels, but does not anticipate doing so at this time. In addition, no such change will be promulgated without consent of the affected parties, as required.

Procedure 6.3: Withdrawing from a customer's total CRD, and not just its Firm CRD, will violate many of the principles and policies Western has adopted to encourage energy conservation, load management, and the widespread use of Federal power. In addition, withdrawing from the total CRD would increase Western's administrative burden by requiring Western to determine and keep track of the withdrawals made from the different categories of CRD. To avoid this problem, Western will determine the amount to be withdrawn based on a customer's contribution to the MSD and subtract it from a customer's Firm CRD.

Procedure 6.4: Western, in previous withdrawals, established a policy of withdrawing until a customer's CRD reached less than 25 kW before it terminated the customer's contract. Once the contract was terminated, the customer ceased to be a customer of Western. The impact of such a policy, given Western reinstatement policy, was to shift that CRD to the larger customers at the expense of the smaller customers. Western no longer considers this an equitable policy, and therefore, has decided to place a limit on the amount of CRD that can be withdrawn from a customer. At 0.5 MW, the average annual cost of serving a customer roughly equals the revenues obtained from such service. Consequently, it is generally not economical for Western to serve customers with CRDs below 0.5 MW. In addition, Western feels that the policy of guaranteeing all of its customers a CRD of 0.5 MW embodies the principle of its widespread use policy in that each customer is assured that it will remain a customer of Western, and retain benefits from Federal power for the term of the customer's power sales contract.

Procedure 6.5: Western believes that 20 percent of the Firm CRD of all of our customers should be sufficient to serve the needs of the First Preference Customers and the limitations of the 1,152–MW load level. In addition, the expiration of the Renewable Resource, Diversity, and other contracts in 1994 offer additional sources of reductions in CRD to support the First Preference

Customers as well as the 1,152–MW load level limit. It is not Western's intent to announce at this time that any contracts will not be renewed in 1994; Western is simply pointing out that one alternative to further withdrawals, if necessary, is allowing these contracts to expire.

These procedures do not apply to a situation where more power is required to be withdrawn than the amounts listed in procedure 6.5. If it appears that such a situation will exist, Western will formulate additional procedures, as necessary, at that time.

Procedure 6.6: This formula contemplates withdrawing WD from the allocation of a customer whether or not that customer is making full use of the allocation. In this way the formula does not penalize a customer for not using its allocation, although multiple iterations of the formula may be required to reduce the MSD to 1,152 MW. In addition, this formula does not penalize those customers with lower loss factors, or those customers which contribute less to the MSD.

Procedure 6.7: This procedure recognizes that the formula of procedure 6.6 will not yield a number in CRD units. The consequence is that multiple iterations will be required to reduce the MSD to 1,152 MW.

Procedure 6.8: By application of Reclamation law, First Preference Customers are not subject to withdrawals to serve load level. It is necessary to include First Preference Customers in Calaveras and Tuolumne Counties only to satisfy other contractual commitments. The consequence of such action is that each 1,152–MW load level withdrawal will necessitate a First Preference Customer withdrawal to serve the needs of the First Preference Customers in Calaveras and Tuolumne Counties.

Procedure 6.9: Since both the 1,152–MW load level withdrawal and the First Preference Customer withdrawal will reduce Westlands' CRD, a Westlands withdrawal may be necessary to restore the withdrawn CRD to Westlands. A Westlands withdrawal may also be necessary any time Westlands requests additional CRD.

Procedure 6.10: Consistent with past practice, Western may reinstate CRD under the conditions described in procedure 6.10 (see section 7).

Procedure 6.11: Western intends to continue its current load control program. In addition, Western is considering reinstating CRD lost as the result of a withdrawal in months when Western's MSD is not expected to exceed 1,152 MW to encourage customer participation in Western's load control program.

Procedure 6.12: Western recognizes that it may be possible for a 1,152-MW load level withdrawal to occur without withdrawals occurring at the 925- or 1,050-MW load levels. Western reserves the right to assign the loads to that load level which will minimize withdrawals to all of its customers.

Procedure 7.1: Western will reinstate Westlands Withdrawal Power or Firm CRD in proportion to the amount of CRD withdrawn.

Procedure 7.2: In the case of a 1,152-MW load level reinstatement, the amount to be reinstated will be equal to the difference between the MSD and 1,152 MW (MSD-1,152) or the amount of CFR withdrawn to date. A 1,152-MW load level reinstatement will necessitate a reinstatement of Westlands Withdrawal Power.

Procedure 7.3: Since the forumla in procedure 7.1, under the conditions of a 1,152-MW load level reinstatement, will not yield an answer in CRD units, multiple iterations of the formula will be required to complete a reinstatement. Since each iteration of a withdrawal at the 1,152-MW load level involves rounding up, the reinstatement procedure must also employ this rounding mechanism to be equitable to all customers. Any other rounding procedure would require more iterations, which would favor those customers with the greatest amount of power withdrawn. The ultimate result of another procedure would be to shift power from those customers with the least amount of CRD withdrawn (generally those customers with the smaller CRDs), to those customers with the most withdrawn CRD (generally those customers with the larger CRDs).

Procedure 7.4: This procedure contemplates that a Westlands reinstatement may occur if Westlands Water District should return any portion of their allocated CRD to Western, or as a result of a 1,152-MW load level reinstatement, a previously withdrawn portion of the Westlands entitlement is reinstated.

Procedure 7.5: Because normal rounding may result in reinstating more CRD than is available for reinstatement, the results of the computation of procedure 7.1 will be rounded down to the nearest 1 kW.

Procedure 7.6: Conditions may occur which would necessitate a withdrawal of CRD immediately following a reinstatement of CRD. Such an occurrence increases the administrative workload with little, if any, benefit to the customers. In general, if Western determines that the cost or benefits of a reinstatement do not justify the reinstatement, Western, under such circumstances, may deny a reinstatement.

Responses to Customer Comments

Presented below are the responses to customer comments received following the public comment forum of September 17, 1985.

City of Palo Alto

1. Nonwithdrawable CRDs are provided for by the Santa Clara Settlement.

Response: On August 2, 1985, the City of Palo Alto filed an application in the U.S. District Court for the Northern District of California for an order confirming its interpretation of the meaning of the Santa Clara Settlement. Palo Alto argued that the settlement prohibited Western from withdrawing power from it for any purpose. The cities of Redding and Roseville, and the Plumas Sierra Rural Electric Cooperative, then filed a similar application. In its response, the United States opposed the applications, contending that the settlement did not prohibit Western from withdrawing power from Palo Alto, Roseville, Redding, or Plumas Sierra to meet Project Use requirements, the requirements of the First Preference Customers, and load level limitations under Contract 2948A. By order of October 11, 1985, the District Court granted the applications, holding that the CVP power allocated to Palo Alto, Roseville, Redding, and Plumas Sierra under the Santa Clara Settlement is not subject to withdrawal:

(1) To supply energy to preference customers in Trinity, Tuolumne, and Calvaras Counties, California; (2) to supply Projects Use power requirements of the CVP; and (3) in the event power available to service the total load of preference agencies contracting for CVP power exceeds the amount PGandE is obligated to supply under Contract 2948A, (Order, page 5).

After the order was issued, the City of Santa Clara filed a Motion requesting the court to alter or amend the October 11 order to grant similar relief to Santa Clara. The court has granted Santa Clara's motion. The United States has appealed the District Court decision to the U.S. Ninth Circuit Court of Appeals.

Western believes that the outcome of this litigation will not change the application of the final Withdrawal Procedures but only the pool of customers to which the procedures apply. In addition, Western must proceed with promulgation of these final

procedures so that it may render accurate and final power bills to its customers. Pending resolution of this dispute, Western will not withdraw the purportedly nonwithdrawable power from those customers that are party to the Santa Clara Settlement.

2. The city believes that the First Preference Customers are entitled to energy only. If Western wants to firm this energy, Western should purchase capacity from PGandE or some other source.

Response: Western is purchasing firming capacity and energy to support preference customer loads including the loads of the first preference customers. These purchases are made in accordance with Contract 2948A. Regarding the argument that the first preference customers are only entitled to energy, please see "Responses to Comments on the Proposed Formulas for Withdrawals," page 2, under the title "CITY OF ALAMEDA," subtitle "General Comments," comment 4.

3. Palo Alto believes a utility must be more than a "paper shell" with a utility responsibility who leases the distribution system and contracts out all other services.

Response: Western evaluates each customer receiving an allocation on their ability to receive power from Western. Such evaluation ensures that each Western customer is not a "paper shell" utility. Refer to "Responses to Comments on the Proposed Formulas for Withdrawals," page 9, under the title "PALO ALTO," subtitle "General Comments," comment 3.

4. By not using the Westlands allocation to protect the various load levels Western has in effect created a new class of customer with an allocation derived from a specific marketing plan that was righting a wrong created in the past. Had the wrong not been done then Westlands would be like the rest of the CVP customers. It should not make any difference who is using a piece of Westlands' allocation when a withdrawal is required—pro rata, withdrawals from each user of Westlands power is a separate reduction. That's the risk when one uses another's allocation.

Response: Though Type I Withdrawal Power is now a separate class of power, that power was allocated, initially, as that portion of the power not being used by the load growth customers of which Palo Alto is one. As the loads of the load growth customers grew, the load level was exceeded and power was withdrawn from those customers possessing Type I Withdrawal Power. The Westlands situation is very similar. The process being used with the Westlands power is an extension of a process previously used to handle Type I Withdrawal Power. Consequently, Western will not include the City's suggestion in the final procedures for withdrawal.

5.a. Palo Alto believes that rules which allow a customer to manipulate its take from Western for the sole purpose of protecting its Type I, Type II, Westlands, or CRD allocations from withdrawals are unfair.

Response: Western has stated that it will be withdrawing Type I and Type II Withdrawal Power before it does a 1,152–MW load level withdrawal. However, there still exists the possibility, although remote, where a 1,152–MW load level withdrawal would be made while there is still Type I or Type II Withdrawal Power in existence. Even so, the City should recognize that a customer's attempt to reduce Western's share of its load, for whatever the reason, protects the Firm CRD of the City at the 1,152–MW load level. Western's goal is to retain as much of every customer's CRD as possible, and not to sacrifice the CRDs of a few to maintain the CRDs of other customers. Western does not consider any policy or procedure which helps its customers to retain as much of their CRD as possible to be unfair, but to be beneficial to all customers. In this regard, Western is developing incentives to encourage action which will preclude or reduce Firm CRD withdrawals.

5.b. Some customers, but not all, have the opportunity to use the spot market for purchases to displace a specific kind of CVP service, thereby not having that specific service subject to withdrawals.

Response: This is true for 925–MW load level withdrawals, but not for 1,152–NW load level withdrawals. CRD preserved by this process will only be available as long as Type II Withdrawable Power is not withdrawn. At this point in time it becomes necessary to withdraw Type II Withdrawable Power, Type I Withdrawable Power will cease to exist, whether it is being used or not.

5.c. Some customers are being financially compensated to schedule their operations so as not to be coincident with the Western monthly peak. Not all customers have this freedom. Withdrawal for these customers should be based upon the total allocation of CVP power because compensation for their efforts is already being provided for.

Response: Western concurs with the City on this point, and in fact the current withdrawal procedures base withdrawals on such customers total CRD.

5.d. There is need of a rule that establishes the classes of CVP power and the order in which each is used in that customer's load during Western's coincident peak and thereby subject to withdrawal.

Response: Western believes that CRD classification, and withdrawals based upon such classification, are a means of preserving the CRD of one group of Western's customers at the expense of another group of Western's customers. Western believes that such a method would provide no benefit to CVP customers as a whole, and will not be adopted.

6. The various contracts between Western and PGandE which made it possible for the U.S. Government to make firm sales to other CVP customers were so structured that the First Preference Customers were not a part of any load level limitations. Therefore, withdrawals for load level which include First Preference Customers is inappropriate.

Response: Western disagrees that the load level limitations do not include the First Preference Customers. The supported load level deals with Western's Preference Customer simultaneous load, and the First Preference Customers must be a part of that load for they are Preference Customers.

City of Redding

1. Western has been exceedingly generous in converting energy entitlements into firm power for the Counties of Origin, while ignoring the 5-year window provisions for these entities and allowing them to receive load growth power.

Response: Western does not believe that it has been overly generous in the formula it developed for converting energy entitlements to firm power. The formula applies the same principles to the determination of firm power for First Preference Customers that are applied to Western's other customers. In addition, Western has not ignored the 5-year window provisions of the statutes. The provisions in the statutes apply to the initial allocation of power and not to any subsequent increases in power allocations. Finally, the First Preference Customers are entitled to receive up to 25 percent of the output of the plants located in the Counties of Origin, as integrated with the CVP power system. To the extent that such a limitation allows for load growth, then the First Preference Customers are entitled to load growth.

2. With the Palo Alto versus Western legal action pending in the courts, the City strongly recommends that these procedures be set aside until such time that the outcome of that action is more defined.

Response: See the response to Palo Alto comment 1.

3. The City cannot support the concept of any firm power being withdrawn while withdrawable power is available, nor do we find possible withdrawals from the 925 group to be fair and equitable when such withdrawals would cover the over-allocated 102 group.

Response: Western intends to utilize the loads of the First Preference Customers to preclude the withdrawal of firm power instead of withdrawable power. However, the possibility exists that firm power might be withdrawn before all withdrawable power is gone. Consequently, while Western cannot guarantee that it will not withdraw firm power before all withdrawable power is gone, it will attempt to prevent such as occurence.

The "over-allocation" referred to is actually an allocation of diversity power. Those allocations have resulted in the restoration of power to the 925 group, sustained CRD allocations to that same group which would not be possible without such allocations, and protected the Firm CRDs of all of Western's customers. However, the power so allocated can not be sustained indefinitely, and current withdrawals are a result of a decrease in diversity for that group and an increase in First Preference Customer load. As such, Western believes that such withdrawals are equitable and represent the occurrence of anticipated events.

4. The City does not understand the equity of exempting SMUD from withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties based upon past contractual deals.

Response: Western is legally bound to honor its contractual commitments. The particular commitment referred has been in existence since March of 1966, and would have been in existence until 1994 (when the SMUD contract was due to expire) except for the settlement agreement which was reached in 1983. The extension of this commitment in the settlement agreement was part of an overall settlement package which benefited all of Western's customers. Regardless of the conditions surrounding the existence of the commitment, Western is legally bound to honor that commitment and incorporate them into the withdrawal procedures.

5. The 17-month notice proposed by Western is inadequate for any utility to obtain alternative firm power resources.

Response: Western believes that the 17-month notice provision, which is currently in effect, is all that it can reasonably give and still retain the functionality of its withdrawal procedures. To increase the notice period would be to place Western in a position where it would be required to withdraw by contract, and be unable to do so because of the increased notification period. Such a position is untenable, and consequently, Western cannot increase the notice period.

6. The City recommends that the demand charge be waived for that firm power (20 percent) which is withdrawable.

Response: Western's power rates must reflect certain costs, which include but are not necessarily limited to, operation, maintenance, replacement, and certain project construction costs, which are to be repaid within certain timeframes as stated in Federal laws and regulations.

An increase in the rate for nonwithdrawable power would be required if Redding's recommendation were implemented. In view of this, Western cannot agree to eliminating the capacity charge for withdrawable power.

City of Santa Clara

1. Request that the rulemaking proceedings be delayed until the court's position on the Palo Alto lawsuit is known.

Response: See the City of Palo Alto, comment 1.

2. The City notes that there are no specific references in the procedures concerning the reinstatement of Type II withdrawable power. Since the procedures are complex and their implications are not easily understood, the City is concerned that its comments not be interpreted as acceptance of anything less than the full rights to reinstatement as were provided by the Santa Clara Settlement and the City's contract for electric service with Western.

Response: The reinstatement of Type II withdrawable power is part of the 1,050–MW withdrawal procedures, which are not changed by these procedures. In addition, the right to reinstatement of Type II withdrawable power is spelled out in the MOU.

Department of the Navy

1. The Navy supports the use of customer contributions to the MSD as the basis for load level withdrawals.

Response: Western appreciates the comment.

2. The Navy supports the use of purchase power for Project Use and the deferral of rules relating to their withdrawal.

Response: Western appreciates the comment.

3. The Navy suggests that Western consider using contributions to the MSD as a basis for First Preference Customer withdrawals.

Response: See Supplementary Information, procedure 4.4.

Modesto Irrigation District (MID)

1. MID disagrees with the apparent change which would drop the preferred protection for renewable resource and cogeneration allocations.

Response: Western has not dropped the protection given to the renewable resource and cogeneration allocations. Instead, it has substituted Firm CRD withdrawals for renewable resource and cogeneration withdrawals in the withdrawal process. The protection provision was criticized by many of Western's customers, and in addition, SMUD has argued that giving preference to one type of CRD over another is a violation of Western's contract with SMUD. Although Western may not agree with all of the arguments, Western believes that the particular method chosen manages to preserve the preferred status of the renewable resource and cogeneration allocations, while at the same time accounting for the magnitude of the CRDs in the withdrawal process.

2. The 17-month notification period and retroactive withdrawals could create a hardship for many customers in power resource acquisition and planning.

Response: See SMUD comment 2 and City of Redding comment 5.

3. Modesto recommends that a demand rate adjustment be instituted to lighten the burden of retroactive withdrawals.

Response: See City of Redding comment 6.

Sacramento Municipal Utility District (SMUD)

1. The use of SMUD's total CRD in the formula for pro rata withdrawal's is a violation of paragraph 12 of Contract No. DE–MS65–83WP59070 between Western and SMUD.

Response: The total CRD is used for all of Western's customers. Consequently, it treats the other customers the same as it treats SMUD, and therefore, is not a violation of paragraph 12 of the referenced contract.

2. For the withdrawal procedures to be fair, and at a minimum consistent with Western's contracts with CVP customers, Western should notify CVP customers of a withdrawal at the time that the withdrawal actually occurs or, if that is in fact not possible due to the terms of 2948A, give advance notice that a withdrawal of a certain magnitude will occur within a specified range of time.

Response: Western has indicated that it expects approximately 7–10 percent of all Firm CRD to be withdrawn, gradually, during the term of a customer's contract. It would be impossible, with any degree of accuracy, to predict the magnitude of withdrawals over a smaller period of time for there are many things which impact the magnitude of withdrawals, not the least of which is Western's load monitoring program and conservation efforts. Furthermore, any number provided by Western would probably be the least accurate of any of the pieces of the customer resource plan, and would be small enough in magnitude to be covered by whatever contingency planning is in effect to cover the inaccuracy inherent within the resource plan. Consequently, rather than contribute to the overall inaccuracy of the customer resource plan, Western would prefer not to refine the general guidelines provided above. In addition, Western is willing to work with any customer to assist in arranging for resources or contracts (such as with PGandE) to cover the load of that customer when a withdrawal occurs.

Shasta Dam Area Public Utility District

1. Shasta Dam Area Public Utility District (SDPUD) feels that the first preferential customers should be included in the denominator to determine the ratio of reduction of all participants in the Central Valley Project (CVP).

Response: The load of the First Preference Customers is included in the denominator of the formula for determining the amount of power to be withdrawn from Western's customers.

2. Projection loads forecast by the Bureau of Reclamation may or may not be correct, depending upon the circumstances of the area.

Response: Western recognizes that projections differ from actual quantities. However, estimates tend to fluctuate around the actual in such a manner that the long-term difference between the actual and the estimated quantity is zero or near zero. Consequently, Western feels that the use of estimated quantities in the determination of the entitlement of the First Preference Customers is appropriate and consistent with good utility practice.

3. Western has selected Alternative 1 of the entitlement formulas as the recommended procedure. Example A illustrates this alternative.

Response: Example B illustrates the selected alternative.

4. SDPUD favors any of the examples except Examples F, H, and I.

Responses: The examples simply illustrate the application of the proposed final withdrawal procedures. Western recognizes that the SDPUD would prefer not to be subject to any withdrawals (as illustrated by Examples F, H, and I).

5. Western should subject First Preference Customers to a load level withdrawal. It is not correct to gouge taxpayers and existing long-time customers of Western in an attempt to distribute the remaining with the needs of the customers without considering that all customers should be treated equally from the standpoint of actual need.

Response: Every customer of Western expresses a need for power. To the maximum extent it can, Western has allocated power to meet those needs. The First Preference Customers are now beginning to express their needs. Western is obligated by law to meet those needs. Since all power has been allocated to meet the needs of its other customers, Western must withdraw. The particular method selected by Western will minimize the amount of that withdrawal. The entitlement of the First Preference Customers is guaranteed by law.

6. The load losses based upon point of delivery should be included in the procedure for determining benefits to SDPUD.

Response: The direct application of the result of the withdrawal formula to the CRD does take into account the impact of SDPUD's direct service connection to Western. The benefit of SDPUD varies from 14 percent to 10.5 percent over Western's other customers.

7. Procedure 7.6 should be amended to indicate that Western will base its determination of whether or not a reinstatement will be made on engineering facts and studies, and not by political means.

Response: The decision to reinstate or not reinstate power is a very complex one. It may involve not only engineering considerations, but budgetary, direct financial, and contractual considerations as well. It is not possible for Western to determine in advance what conditions will ultimately determine whether power is reinstated or not reinstated, and therefore, Western prefers the flexibility offered by the current language over the more specific language recommended by SDPUD.

Trinity County Public Utility District (TCPUD)

The comments presented below are those that were submitted by Trinity County Public Utility District. The exact same comments were received by Western for Union Public Utility District, Calaveras Public Power Agency, Hayfork Valley Public Utility District, and Tuolumne Public Power Agency. To eliminate unnecessary repetition, only one set of comments and responses will be presented.

1. TCPUD supports Western's proposal to delay promulgating procedures for project use withdrawals.

Response: Western appreciates TCPUD's support.

2. The proposal to serve the First Preference Customer's (FPC) needs 1,152-MW load level must leave Western the right to withdraw from any load level to meet the needs of the FPCs.

Response: Western intends to use whatever load level is necessary to serve the needs of the FPCs. This intent is expressed in procedures 6.5 and 6.12.

3. The minimum bill provision should be removed (proposed final procedure 3.2).

Response: Western concedes that the controls embodied in final procedure 3.4 herein are sufficient to ensure that the FPCs request only the power they will use. Therefore, proposed final procedure 3.2 is removed from the final procedures.

4. The formula proposed by Western to determine the Maximum Entitlement of the First Preference Customers (MEFPC) is inconsistent with the operation of the CVP and power marketing policies. Losses to load center and losses from load center to the customer point of delivery are made up by purchases from PGandE. In addition, that formula does not consider that such items as diversity, conservation, and renewable resource programs have been enhanced by the "additional electric energy" made available to the CVP due to the construction of the New Melones Powerplant.

Response: The formula for determining the MEFPC is consistent with Western's power marketing policies and the operation of the CVP. All customers pay for losses, some of them pay for the losses directly while the other customers pay for the losses in the rates Western charges for power. However, this does not mean that Western purchases all of these losses from PGandE. The allocation process for the other customers is different than the

allocation process for the First Preference Customers. For the other customers, allocations are made to the customer at delivery point, and those allocations are adjusted by the withdrawal process for excesses over the supported level. Losses are included in the determination of the amount to be withdrawn. First Preference Customers are not subject to withdrawals; therefore, to be consistent, Western must reduce the entitlement for losses from generation to load center and from load center to point of delivery.

The idea that items such as conservation, diversity, and renewable resources have been enhanced by the addition of New Melones or the Trinity River Division is erroneous. If anything, the additional electric energy made available by the addition of the Trinity River Division or New Melones Powerplants has been enhanced by conservation, diversity, and the renewable resource program. Such efforts (conservation, etc.) allow Western to allocate more CRD for a given amount of generation (plus imports) than would be available without such programs. In addition, those customers involved in the programs are contributing to the support of the programs, which are benefiting all customers, including the First Preference Customers, by increasing the revenue base, and thereby, decreasing rates. Under such circumstances, Western cannot agree that the First Preference Customers are entitled to anything more than the "additional energy" made available by the addition of the Trinity River Division and New Melones Powerplants, and therefore, cannot accept TCPUD's position on this issue.

With respect to the proposed Alternative 4, Western cannot agree with the concept embodied in that formula. For the reasons given in the last Federal Register notice (50 FR 33314, August 16, 1985), Western will not adopt that alternative in the final withdrawal procedures.

5. Requests for allocations are made based on estimated need, and Western must accept responsibility if requests of FPCs are denied or modified.

Response: The responsibility for justifying a request lies with the First Preference Customer making the request. To the extent those requests are justified, Western would have no reason to deny such requests. To ensure that all requests for power are not denied, the justification for each request should be prepared very carefully.

6. TCPUD requests Western reduce the 6-month notification period to 4 months, and under circumstances not anticipated at the time the rulemaking is being promulgated, the notification can be reduced further at Western's discretion.

Response: Western is attempting to preserve the alloctions to all of its customers. A request for an increased allocation is a signal that loads will be increasing. To compensate for such increases, Western will have to make arrangements to reduce its simultaneous load, the 6-month notice period will give Western time to accomplish this reduction. Consequently, Western prefers the 6-month notice period and will incorporate it into the final withdrawal procedures.

7. TCPUD supports a 5-year determination of the MEFPC adjusted annually.

Response: Western appreciates TCPUD's support.

8. Power sales to FPCs should not be subject to the availability of facilities, because the congressional action establishing First Preference includes transmission being provided by the Federal Government.

Response: The statute which authorized the development of the Trinity River Division of the CVP clearly states that First Preference Customers must be "ready, able, and willing . . . to enter into contracts for the . . . ." The availability of facilities, as outlined in final procedure 3.10, is part of the conditions to be satisfied in order that a First Preference Customer become ready, willing, and able to enter into a contract with Western for power.

9. The wording of proposed final procedure 3.12 should be changed to include all customers and not just First Preference Customers.

Response: Section 3 deals with allocations to First Preference Customers, and cannot possibly apply to Western's other customers. Western, therefore, can see no reason to change the language of final procedure 3.11.

10. TCPUD supports the concept, presented in procedure 6.8, that First Preference Customers are not subject to load level withdrawals.

Response: Western appreciates TCPUD's support.

Regulatory Requirements

Regulatory Flexibility Act of 1980—Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that this rulemaking relates to an administrative service under contracts, and therefore is not a rule within the purview of the Regulatory Flexibility Act. Under 5 U.S.C. 6012(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291—DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

National Environmental Policy Act—Western is required to conduct an environmental evaluation of certain power marketing actions in compliance with the National Environmental Policy Act of 1969, and the DOE regulations published in the **Federal Register** (45 FR 20694, as amended). Under the DOE guidelines, Western has made an evaluation of the possible environmental impacts of the proposed withdrawal of allocation and determined that such withdrawals will not significantly impact the environment.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for this proceeding will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 978-4418.

Issued at Golden, Colorado, February 7, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-4715 Filed 2-28-86; 11:29 am]

BILLING CODE 6450-01-M

federal register

Wednesday
March 5, 1986

Part IV

Environmental Protection Agency

40 CFR Part 61

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant; Clarification and Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[ADL-FRL-2978-6]

Clarification and Correction of Previously Published Notice on the Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification and correction of previously published **Federal Register** notice on Trichloroethylene.

SUMMARY: This notice describes the clarification of a previously published **Federal Register** notice on the chemical trichloroethylene (TCE). The previously published notice was incorrectly identified as a Proposed Rule rather than as a Notice of Intent to List Trichloroethylene under section 112 of the Clean Air Act (CAA) and Solicitation of Information. In addition, the previously published notice erroneously included an amendment to 40 CFR Part 61. The amendment to 40 CFR Part 61 for TCE is correctly being published elsewhere in today's **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (telephone 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: On Monday, December 23, 1985, a notice entitled "Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule" was published in the **Federal Register** (50 FR 52422). This notice incorrectly identified the action as being a proposed rule rather than as a notice of the Agency's intent to list TCE under section 112 of the Clean Air Act and solicitation of information. In addition, this notice erroneously included an amendment to 40 CFR Part 61. The purposes of today's notice are to clarify the form of the action intended in the previously published notice; to refer to the appropriate amendment to 40 CFR Part 61 (see notice published elsewhere in today's issue of the **Federal Register**); and to correct the following transcriptional errors appearing in 50 FR 52422.

The information presented in 50 FR 52422 is to be corrected as follows:

The correct phone number for ORD Publications in Cincinnati, Ohio, is 513–569–7562 commercial/684–7562 FTS.

Two sentences within the Risks to Public Health section of 50 FR 52422 were truncated and combined. The correct sentences read as follows:

The upper-bound nature of the unit risk estimate is such that the true risk is not likely to exceed this value and may be lower. Using the unit risk estimate for air (1.3×10^{-6}), the aggregate risk of cancer due to exposure to TCE for persons living within 50 kilometers of production sites or chemical plants or drinking water treatment facilities, and resulting from emissions from metal degreasing or publicly owned treatment works or miscellaneous solvent uses, is 4.1 cases of cancer per year (Table 2).

The following references to 50 FR 52422 were deleted and should be added at the end of the notice:

EPA (Environmental Protection Agency) (1985a). Survey of Trichloroethylene Emission Sources, Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–450/3–85–018.

EPA (Environmental Protection Agency) (1985b). Health Assessment Document for Trichloroethylene. Environmental Criteria and Assessment Office, Office of Research and Development, Research Triangle Park, NC. EPA–600/8–82–006F.

Federal Register Notice:

45 FR 39766, June 11, 1980. Standards of Performance for New Stationary Sources of Organic Solvent Cleaners.

Fukuda, K., Takemoto, K., and H. Tsurata (1983). Inhalation Carcinogenicity of Trichloroethylene in Mice and Rats. Industrial Health 21: 243–254.

Henschler, D. Elsasser, H., Romen, W., and E. Eder (1984). Carcinogenicity study of trichloroethylene, with and without epoxide stabilizers, in mice. Cancer Res. Clin. Oncol. 107: 149–156.

Hunt, W.F., Jr., R.B. Faoro, T.C. Curran, and J. Muntz (1984). Estimated Cancer Incidence Rates for Selected Toxic Air Pollutants using Ambient Air Pollution Data. U.S. EPA, Office of Air Quality Planning and Standards. June 3, 1984, revised April 23, 1985.

Memorandum from Co-Chairpersons of Risk Technical Panel to Dr. Betty Anderson on the Classification of Carcinogenicity for Trichloroethylene and Perchloroethylene. October 18, 1984.

SAB (Science Advisory Board) (1984). Letter from SAB to William Ruckelshaus on Key Findings and Conclusions on the Draft Health Assessment Document for Trichloroethylene. December 17, 1984.

Vandenberg, J.J. (1985). Exposure and Cancer Risk Assessment for Trichloroethylene. Memorandum to the Files, October 11, 1985.

Dated: February 28, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–4758 Filed 3–4–86; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[A-4-FRL-2978-7]

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On Monday, December 23, 1985 a notice entitled "Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant" was published in the Federal Register (50 FR 52422). Based on the assessment presented in that notice, and corrections to that notice published elsewhere in today's Federal Register, 40 CFR Part 61 is amended as described in this notice.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (telephone: 919–541–5645 commercial/629–5645 FTS).

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is amended by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Trichloroethylene [50 FR 52422; December 23, 1985.]

* * * * *

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–4759 Filed 3–4–86; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Wednesday
March 5, 1985

Part V

Environmental Protection Agency

40 CFR Part 61

Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant; Clarification and Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[ADL-FRL-2978-9]

Clarification and Correction of Previously Published Notice on the Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Clarification and correction of previously published **Federal Register** notice on Perchloroethylene.

SUMMARY: This notice describes the clarification of a previously published **Federal Register** notice on the chemical Perchloroethylene (PERC). The previously published notice was incorrectly identified as a Proposed Rule rather than as a Notice of Intent to List Perchloroethylene under section 112 of the Clean Air Act (CAA) and Solicitation of Information. In addition, the previously published notice erroneously included an amendment to 40 CFR Part 61. The amendment to 40 CFR Part 61 for PERC is correctly being published elsewhere in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (telephone 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: On Thursday, December 26, 1985, a notice entitled "Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule" was published in the **Federal Register** (50 FR 52880). This notice incorrectly identified the action as being a proposed rule rather than as a notice of the Agency's intent to list PERC under section 112 of the Clean Air Act and solicitation of information. In addition, this notice erroneously included an amendment to 40 CFR Part 61. The purposes of today's notice are to clarify the form of action intended in the previously published notice; to refer to the appropriate amendment to 40 CFR Part 61 (see notice published elsewhere in today's issue of the **Federal Register**); and to correct the following transcriptional errors appearing in 50 FR 52880.

The information presented in 50 FR 52880 is to be corrected as follows:

The correct phone number for ORD Publications in Cincinnati, Ohio, is 513–569–7562 commercial/684–7562 FTS. To receive information on SAB transcripts, the correct phone number for Janet Workcuff is 202–382–5036 commercial/382–5036 FTS.

The following references to 50 FR 52880 were deleted and should be added at the end of the notice:

Anderson, E. (1985a). Memorandum from Dr. Elizabeth Anderson, Director, Office of Health and Environmental Assessment to John O'Connor, Director, Strategies and Air Standards Division, on the Interim Carcinogenicity Weight of Evidence for Tetrachloroethylene Based on New NTP Inhalation Bioassay. September 29, 1985.

Anderson, E. (1985b). Memorandum from Dr. Elizabeth Anderson, Director, Office of Health and Environmental Assessment to Don Clay, Director, Office of Toxic Substances and Gerald Emison, Director, Office of Air Quality Planning and Standards, on the Interim Revised Inhalation Unit Risk Estimate for Tetrachloroethylene (Perc) Based on Recent NTP Inhalation Bioassays. November 18, 1985.

EPA (Environmental Protection Agency) (1985a). Survey of Perchloroethylene Emission Sources, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. EPA 450/3–85–017.

EPA (Environmental Protection Agency) (1985b). Health Assessment Document for Tetrachloroethylene (Perchloroethylene). Environmental Criteria and Assessment Office, Office of Research and Development, Research Triangle Park, N.C. EPA 600/8–82–005F.

Hunt, W.D. Jr., R.B. Faoro, T.C. Curran and J. Muntz (1984). Estimated Cancer Incidence Rates for Selected Toxic Pollutants Using Ambient Air Pollution Data. U.S. EPA, Office of Air Quality Planning and Standards, July 3, 1984.

Memorandum from Co-Chairpersons of the Risk Forum Technical Panel to Dr. Betty Anderson on the Classification of Carcinogenicity for Trichloroethylene and Perchloroethylene, October 18, 1984.

National Toxicology Program (NTP) (1985). NTP Technical Report on the Toxicology and Carcinogenesis Studies of Tetrachloroethylene (Perchloroethylene) in F344/N Rats and B6C3F1 Mice. Board Draft 8/85.

Science Advisory Board (SAB). Letter from SAB to William Ruckelshaus on Key Findings and Conclusions on the Draft Health Assessment Document for Perchloroethylene, January 4, 1985.

Vandenberg, J.J. (1985). Exposure and Cancer Risk Assessment for Perchloroethylene. Memorandum to the files, November 15, 1985.

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–4760 Filed 3–4–86; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[A-4-FRL-2978-8]

Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On Thursday, December 26, 1985 a notice entitled "Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant" was published in the **Federal Register** (50 FR 52880). Based on the assessment presented in that notice, and corrections to that notice published elsewhere in today's **Federal Register**, 40 CFR Part 61 is amended as described in this notice.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (telephone: 919–541–5645 commercial/629–5645 FTS).

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is amended by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Perchloroethylene (50 FR 52880; December 26, 1985.)

* * * * *

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–4761 Filed 3–4–86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
March 5, 1986

Part VI

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

Federal Hazardous Waste Facilities; Policy and Interpretation, and Intent to Propose Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

[FRL-2978-3]

Hazardous Waste Management System; Supplement to Preamble to Final Codification Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy and interpretation.

SUMMARY: In November 1984 Congress comprehensively amended the Resource Conservation and Recovery Act (RCRA) of 1976. The amendments include a new section 3004(u) requiring corrective action for releases of hazardous waste and constituents at hazardous waste management facilities seeking RCRA permits. On July 15, 1985 (50 FR 28702) the Environmental Protection Agency (EPA) published a final rule codifying statutory changes to its hazardous waste management program. In the preamble to this final codification rule, EPA announced that it needed to resolve legal and policy issues concerning the applicability of the new corrective action program to federal hazardous waste facilities. EPA today is supplementing that preamble by explaining the resolution of three issues of statutory interpretation concerning federal agency compliance. In a separate notice also published today EPA is announcing its intent to propose rules addressing three related issues.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424–9346 or at (202) 382–3000. Also, Denise Hawkins, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–2210.

SUPPLEMENTARY INFORMATION: In November 1984 Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984. The amendments include a new section 3004(u), 42 U.S.C. 6924(u), requiring any permit issued to a hazardous waste management facility after November 8, 1984 to require corrective action for all releases of hazardous waste or hazardous constituents from any solid waste management unit at the facility regardless of when waste was placed in the unit.

On July 15, 1985 (50 FR 28702) EPA promulgated a final rule codifying statutory changes to its hazardous waste regulations. In the preamble to this rule, EPA presented its view on the meaning of "facility" in section 3004(u). EPA took the position that Congress intended "facility" to include the entire site under control of the owner or operator engaged in hazardous waste management (50 FR 28712). EPA added, however, that it had not resolved various legal and policy questions regarding the extent to which Congress intended this definition to apply to hazardous waste "facilities" owned or operated by federal agencies. EPA gave a commitment to make its best efforts to resolve these issues within 60 days.

Today EPA is supplementing the preamble to the codification rule by giving notice of its views on three issues of statutory interpretation concerning federal compliance with section 3004(u). In a separate notice published elsewhere in today's **Federal Register** EPA is also announcing that it intends to address three additional issues through rulemaking.

As a result of the promised review, EPA has concluded that section 3004(u) subjects federal facilities to corrective action requirements to the same extent as any facility owned or operated by private parties. Furthermore, EPA has determined that the statute requires federal agencies to operate under the same property-wide definition of "facility." These results are consistent with section 6001 of RCRA, 42 U.S.C. 6961, which generally requires each department, agency and instrumentality of the federal government to comply with RCRA requirements to the same extent as any other person.

The federal agencies, however, have raised several issues that merit special consideration. These issues involve the scope of federal ownership interests and the need to set priorities for the use of federal cleanup funds.

EPA is resolving the first of these issues as a matter of statutory interpretation. The federal agencies have pointed out that the United States could be considered the "owner" of a federal hazardous waste facility. Under EPA's interpretation of the definition of "facility" for section 3004(u), contiguous tracts of federal lands owned by the United States but administered by different federal agencies could be considered a single "facility" for corrective action purposes. A permit for a hazardous waste unit located anywhere on this collective federal "facility" would trigger corrective action requirements for every solid waste management unit found within its boundaries. In the western half of the United States, continguous federal lands cover large portions of several states. Moreover, the agency that operates a hazardous waste unit might not have authority to require or manage cleanup of solid waste units on lands administered by other agencies. The size of the facility and the administrative limitations could make corrective action very difficult.

EPA believes that Congress did not intend section 3004(u) to require such wide-ranging cleanups on federal lands. Congress has consistently expected individual federal departments and agencies to obtain RCRA permits and manage hazardous waste. For example, section 6001 of RCRA specifically requires "departments, agencies and instrumentalities of the Federal government" to comply with RCRA requirements. The legislative history of this provision also requires "federal agencies" to comply with RCRA. S. Rept. 94–938, 94th Cong., 2d Sess. at 24 (1976). Congress could easily have referred to the "United States" if it intended the entire federal government to respond together. Consequently, EPA is today interpreting the concept of ownership for the purposes of section 3004(u) as referring to individual federal departments, agencies, and instrumentalities.

EPA has concluded that it would be more appropriate to resolve the remaining issues through rulemaking. EPA intends to propose rules in the near future to resolve these issues, which are described in greater detail in a separate notice published in today's **Federal Register.**

Dated: February 28, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–4754 Filed 3–4–86; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271 and 280

[FRL-2978-4]

Hazardous Waste Management System; Intent To Propose Rules for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to propose rules.

SUMMARY: In November 1984 Congress comprehensively amended the Resource Conservation and Recovery Act (RCRA) of 1976. The amendments include a new section 3004(u) requiring corrective action for releases of hazardous waste and constituents at hazardous waste management facilities seeking RCRA permits. On July 15, 1985 (50 FR 28702) the Environmental Protection Agency (EPA) published a final rule codifying statutory changes to its hazardous waste management program. In the preamble to this final codification rule, EPA announced that it needed to resolve legal and policy issues concerning the applicability of the new corrective action program to federal hazardous waste facilities. Elsewhere in today's **Federal Register** EPA is supplementing that preamble by stating its views on three issues of statutory interpretation. In this notice EPA announces its intent to propose rules addressing three additional issues related to federal agency compliance.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. Also Denise Hawkins, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: In November 1984 Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984. The amendments include a new section 3004(u), 42 U.S.C. 6924(u), requiring any permit issued to a hazardous waste management facility after November 8, 1984 to require corrective action for all releases of hazardous waste or hazardous constituents from any solid waste management unit at the facility regardless of when waste was placed in the unit.

On July 15, 1985 (50 FR 28702) EPA promulgated a final rule codifying statutory changes to its hazardous waste regulations. In the preamble to this rule, EPA presented its view on the meaning of "facility" in section 3004(u). EPA took the position that Congress intended "facility" to include the entire site under control of the owner or operator engaged in hazardous waste management (50 FR 28712). EPA added, however, that it had not resolved various legal and policy questions regarding the extent to which Congress intended this definition to apply to hazardous waste "facilities" owned or operated by federal agencies. EPA gave a commitment to make its best efforts to resolve these issues within 60 days.

Elsewhere in today's **Federal Register** EPA is publishing a policy notice that supplements the preamble to the codification rule by giving notice of EPA's views on three issues of interpretation concerning federal compliance with section 3004(u). In this notice EPA is announcing that it intends to address three additional issues through rulemaking. This notice is not a proposal and EPA is not yet requesting comments on these issues.

In the policy notice published separately today, EPA is announcing that it interprets the concept of on "ownership" for the purposes of defining facility boundaries under section 3004(u) as refering to individual departments, agencies and instrumentalities. In some cases EPA believes that "ownership" should refer to major departmental subdivisions that exercise independent management authorities. For example, within the Department of Defense, EPA believes that the term should be viewed as referring separately to the separate branches of the Armed Services. Similarly, within the Department of the Interior, EPA believes that "ownership" should refer to major subdivisions such as the National Park Service and the Bureau of Land Management. If ownership is not defined in terms of these smaller units, the logistical problems described in the other notice will continue to hamper federal corrective actions. EPA therefore believes that recognition of these subdivisions is consistent with Congressional intent. EPA will propose a rule to clarify position and explain more fully the rationale for recognizing specific subdivisions. In the interim, EPA intends to recognize principal subdivisions as a matter of statutory interpretation on a case-by-case basis in individual permit proceedings.

The Department of the Interior has expressed concern that federal agencies might be considered "owners" of hazardous waste facilities on federal lands operated by private parties with partial property interests such as leases or mineral extraction rights. The Department urges that the federal government should not be held responsible for releases from such operations. Furthermore, it believes that the federal agency should not have to clean up releases on contiguous federal land when such a private party applies for a RCRA permit for its hazardous waste facility.

EPA intends to propose a rule that limits Federal agency responsibility for facilities operated by private parties with legal ownership interests by identifying a "principal owner" for the purpose of defining the "facility" boundary under section 3004(u). The "principal owner" probably would be the person most directly associated with operation of the hazardous waste facility. Only property within the scope of the "principal owner's" legal interest would be considered the "facility" for corrective action purposes. The federal agency that administers the same land for the United States would not be responsible for complying with section 3004(u) within the principal owner's "facility." To determine whether a private party on federal lands should be treated as a "principal owner", EPA might consider factors such as the degree of control the federal agency exercises over the private party's actions, or the amount of benefit the agency derives from the private party's waste management operation. EPA will also need to consider the impact of this concept on private lands where one private party has granted legal ownership interests to a second private party that operates a hazardous waste "facility."

Finally, all of the federal agencies that discussed these issues with EPA have advocated the establishment of national priorities for cleaning up hazardous releases at federal facilities under section 3004(u). EPA agrees that it is rational as a matter of public policy to address the most seriously contaminated facilities first. Moreover, since the funding for corrective action is not unlimited, priorities would help maximize the use of available funds. EPA also recognizes that states, which will have the authority to issue hazardous waste permits requiring corrective action after EPA authorizes them to exercise this new authority, may not share the same national perspective or have the same priorities.

EPA intends to develop rules that would allow federal agencies, subject to EPA approval after consultation with the states, to set priorities for correcting releases from solid waste management units at facilities that they own or operate. These rules would also assure a state's full participation in establishing

the priorities as a part of the authorization process. Further, EPA would ensure that any priority setting scheme would not disturb the authorized state's traditional role as the primary issuer of RCRA permits. After a State obtains authorization to implement 3004(u) the State would issue the corrective action portion of a hazardous waste permit in authorized state. EPA is not proposing any specific rules on these issues today, but it intends to propose rules soon.

EPA has resolved three of the basic issues concerning federal compliance with section 3004(u): The applicability of section 3004(u) to Federal agencies; the definition of "facility"; and the concept that the United States is not the "owner" for the purpose of defining RCRA facilities.

EPA will work as quickly as possible to resolve the remaining issues concerning the "principal owner" and national priorities. In the interim, EPA and the states will proceed to review and issue RCRA permits, and EPA will implement 3004(u) requirements at federal facilities. EPA will address issues not yet resolved by rulemaking on a case-by-case basis.

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" or "minor" rule as defined by the Order and to submit all regulations to OMB for review. Since this notice does not propose or promulgate any rules, EPA has not assessed its impacts or classified it as a "major" or "minor" rule under E.O. 12291. EPA, however, did submit this notice to OMB for review.

Dated: February 28, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-4755 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
March 5, 1986

Part VII

Department of Health and Human Services

Public Health Service
Health Resources and Services Administration

42 CFR Part 51a
Special Project Grants—Maternal and Child Health Services; Final Rule

Availability of Funds for Maternal and Child Health Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 51a

Special Project Grants—Maternal and Child Health Services

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The rules below provide for a single regulation for funding projects under the Maternal and Child Health Services Set-Aside Program established by Title V of the Social Security Act (Act). Section 502(a) of the Act, as amended, which is referred to as the Federal Set-Aside Program, provides that between 10 and 15 percent of the appropriation for Title V in each fiscal year shall be retained by the Secretary for the purpose of carrying out special projects of regional and national significance; maternal and child health research and training; genetic disease testing, counseling and information; and hemophilia diagnostic and treatment centers; with funding provided through grants, contracts or other arrangements.

EFFECTIVE DATE: The rules set forth below are effective on March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Siegel E. Young, Jr., Director, Office of Program Development, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A–21, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2853.

SUPPLEMENTARY INFORMATION: On January 12, 1983, the Secretary of Health and Human Services published proposed rules implementing the Maternal and Child Health Services Federal Set-Aside Program and invited public comments (48 FR 1323). Twenty-two individuals and organizations commented on the proposed rules. Set out below is a brief discussion of the statutory basis for the regulation and summaries of the comments received, the Department's response to those comments and the changes to the proposed regulation. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) revised Title V of the Act to establish the Maternal and Child Health Services Block Grant. Between 10 and 15 percent of the funds appropriated for Title V in each fiscal year are to be retained by the Secretary for the award of grants, and for contracts and other arrangements for the purposes specified above. The statute specifically provides for only grant funding for training projects for public and nonprofit private institutions of higher learning (sec. 502(a)(2)(A) of the Social Security Act). The statute provides for funding for research projects through grants, contracts or jointly financed cooperative agreements with public or nonprofit institutions of higher learning or public or nonprofit private agencies and organizations engaged in research or in maternal and child health programs (sec. 502(a)(2)(B)). There are no statutory restrictions relating to the other types of projects to be funded under section 502(a).

These programs were previously funded under sections 503(2) and 504(2), 511 and 512 of the Act and sections 1121 and 1131 of the Public Health Service Act as in effect prior to the enactment of Pub. L. 97–35.

On June 25, 1982, the Secretary amended the regulations issued under the previous authorities to make them applicable to Federal funding awards for the same purpose awarded under the new section 502(a) authority (47 FR 27824). Those regulations were applicable until these final regulations could be published.

Comments:

1. For-Profit Eligibility

Proposed § 51a.3 would make profit making entities eligible for certain Federal funding under this program.

Comment: Seventeen commenters objected to opening up eligibility for Federal funding to for-profit entities, and no commenters supported the proposal. The commenters raised two major objections. The first is that, with limited and decreasing resources, the available funds should be used strictly to provide services and not to provide profit to organizations. The second objection concerns the potential to disrupt the relationship that States have developed with public and private nonprofit organizations. Several States commented that their efforts to develop a State-wide system of maternal and child health services and the integration of their activities in administering the Maternal and Child Health Services Block Grant in their State with the Set-Aside Program would be jeopardized since relationships already exist between the Block Grant activities and the public and private nonprofit entities.

Response: The first objection is without merit, because for-profit entities would not be authorized to use Federal funds for profit and, thus, would use such funds for the provison of services to the same extent as would nonprofit entities. (See 47 FR 53009, November 24, 1982.) The second objection is equally unpersuasive. To prevent the disruption of relationships between the States in their administration of the Maternal and Child Health Block Grant and the public and private nonprofit entities now receiving Federal funding under the Set-Aside Program, it would be necessary to restrict eligible applicants to those entities now receiving such funding. Clearly, it would be inappropriate to give present grantees an exclusive right to continued Federal funding.

In light of the Department's recently adopted policy of making for-profit entities eligible for Federal funds whenever consistent with legislative intent and program purposes, we have decided to publish the regulation as proposed. Thus, while only public or private nonprofit institutions of higher learning will be eligible for training grants, and only public or private nonprofit agencies will be eligible for research grants, contracts or jointly financed cooperative agreements, any public or private entity will be eligible for the remaining types of assistance under this Set-Aside Program. As we noted in the document adopting the new policy regarding for-profit entities, this will likely increase competition and help the Department's programs to better achieve their objectives by increasing the number of proposed projects from which we may select our awardees. (See 47 FR 53007, Nov. 24, 1982.) We note, however, that the concern of the commenters regarding the ongoing relationships between States and recipients of Set-Aside Program funds is addressed elsewhere in the regulations. Section 51a.5(b)(4) sets forth, as one of the funding criteria to be used, the "extent to which the project will be integrated with the administration of the Maternal and Child Health Services Block Grants and other block grants" made to the State. Thus, where the ongoing relationship is a crucial factor in evaluating competing applications for Set-Aside Programs funds, the Department can consider that factor.

II. Third Party Reimbursement

The proposed rule contains no specific requirement that third party reimbursements be collected for services provided for which third parties are obligated to pay.

Comment: One commenter suggested that the previous specific requirement to collect third party payments be retained.

Response: The Department agrees that projects should seek reimbursement from third parties for those services which third parties would ordinarily cover. A provision has been added to the regulations at § 51a.5(b)(6) to indicate that one of the funding criteria to be used is the extent to which the

applicant is or will be successful in obtaining such reimbursement.

III. Priority for Funding

Section 502(a) combines previously categorical programs into a single program. The statute does not specify minimums or maximums for awarding funds from the funds available from the Set-Aside Program for any one type of program nor does it specify that one type of program should be given any additional weight when allotting funds among the various programs. The percentage of funds to be available for each category of projects is also not specified.

Comment: Two commenters suggested that the public be given the opportunity to comment on the priority for funding the different activities within the Set-Aside Program and to have an input into the proportion of funds available for each activity.

Response: It is the belief of the Department that the legislative intent of the Set-Aside Program was to permit administrative discretion in the distribution of funds among these programs. While the public is always free to suggest priorities for funding, the Department will not adopt a formal priority procedure in order to maintain the administrative discretion allowed by the legislation.

IV. Application Review

The proposed regulation does not specify the review procedure used in approving application projects in the Set-Aside Program.

Comment: Several commenters suggested that the proposed rule should specifically require non-governmental review of applications for projects. The commenters suggest that the approval of applications for such large sums of money should not be left solely to government employees.

Response: It is standard practice in the review of maternal and child health services research activities for the applications to be reviewed and approved by the Maternal and Child Health Research Advisory Committee composed of non-governmental consultants. Non-Federal consultants are also always used routinely as panelists on other categories of applications.

The Department believes, however, that it is inappropriate to specify in regulation the particular details of the Department's review process, and we have not adopted this suggestion.

V. Number of Persons To Be Served

The proposed rule specified in § 51a.5(b)(1) that one of the criteria for reviewing applications is the number of persons to be served by the applicant.

Comment: Two commenters argued that this provision should be deleted because it is biased toward urban populations and is vague.

Response: The Department does not agree that this position should be changed, because it is important to know the number of people to be served. Also, the approval of an application is not based solely on the number to be served but on the relationship of the number to be served to the amount of funds requested. In order for the Department to be able to compare applications to ensure that funds are proposed to be spent effectively and efficiently, the application must contain information on the number of persons to be served. We have, however, modified the requirement (renumbered as § 51a.5(b)(3)) to request applicants to describe the special circumstances and differences associated with the provision of care in urban and rural areas so that this can be taken into consideration in reviewing applications.

VI. Applicability to Indian Tribes and Tribal Organizations

The proposed regulation does not specifically designate Indian tribes or tribal organizations as eligible entities.

Comment: One commenter requested that Indian tribes and tribal organizations be specifically included in § 51a.3 as eligible entities.

Response: As provided in section 502(a) of the Act, public or private nonprofit institutions of higher learning may apply for training grants, and public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or programs relating to maternal and chiild health or crippled children's services may apply for awards for research in maternal and child health services or crippled children's services. The remaining Federal awards under this regulation are available to any public or private entity including an Indian tribe or tribal organization. Nevertheless, to dispel any confusion that may exist, we have added to the regulation at section 51a.3 a specific reference to tribes or tribal organizations.

Prohibition Against Discrimination

In addition to the nondiscrimination regulations listed at § 51a.7(a) which are applicable to awards under the Set-Aside Program, the Department points out that the statute, at section 508(a)(2) of the Social Security Act, provides that "(n)o person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title."

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a "major rule" because: it will not cause a major increase in costs or prices for individual industries, government agencies or geographic regions; nor will it have any significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis is not required in connection with the publication of this rule.

Regulatory Flexibility Act

The Secretary has also determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule allows major flexibility and imposes fewer requirements on grantees. Therefore, the Department has determined that this rulemaking does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511) the reporting provisions included in § 51a.4 of this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0915–0050.

List of Subjects in 42 CFR Part 51a

Colleges and universities, Federal support programs—Health, Infants and children, Maternal and child health, Blood diseases, Genetic diseases, Health care, Health facilities.

Dated: July 9, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Approved: July 25, 1985.

Margaret M Heckler,

Secretary.

1. Part 51a of 42 CFR is added to read as follows:

PART 51a—PROJECT GRANTS FOR MATERNAL AND CHILD HEALTH

Sec.

Sec.

Authority: Section 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302); section 502(a) of the Social Security Act, 95 Stat. 819–20 (42 U.S.C. 702(a)).

§ 51a.1 To whom does this regulation apply?

The regulation in this part applies to grants, contracts, and other arrangements under section 502(a) of the Social Security Act, as amended (42 U.S.C. 702(a)), for special projects of regional and national significance; maternal and child health or crippled children's research and training projects; genetic disease testing, counseling and information projects; and comprehensive hemophilia diagnostic and treatment centers.

§ 51a.2 Definitions.

"Act" means the Social Security Act, as amended.

"Genetic diseases" means inherited disorders caused by the transmission of certain aberrant genes from one generation to another.

"Hemophilia" means a genetically transmitted bleeding disorder resulting from a deficiency of a plasma clotting factor.

"Institution of higher learning" means any college or university accredited by a regionalized body or bodies approved for such purpose by the Secretary of Education, and any teaching hospital which has higher learning among its purposes and functions and which has a formal affiliation with an accredited school of medicine and a full-time academic medical staff holding faculty status in such school of medicine.

"Secretary" means the Secretary of Health and Human Services or his or her designee.

§ 51a.3 Who is eligible to apply for Federal funding?

Any public or private entity including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding for a special project of regional or national significance; genetic disease testing, counseling, and information project; comprehensive hemophilia diagnostic and treatment center; or for a special maternal and child health improvement project. Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or programs relating to maternal and child health and crippled children's services programs may apply for grants, contracts or jointly financed cooperative agreements for research in maternal and child health services or crippled children's services.

§ 51a.4 How is application made for Federal funding?

The application must include a budget and narrative plan of the manner in which the project has met, or plans to meet, each of the requirements prescribed by the Secretary. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project. Since the Department anticipates a limited number of renewals, the application must include (except for research projects described at the end of this paragraph) a description of the project's past attempts and current plans to secure other sources of funding.

By their very nature, research projects are generally not continuing activities and do not generate reimbursement. They are therefore not included under the requirement in this paragraph to provide information on other sources of funding.

(Approved by the Office of Management and Budget under control number 0915–0050)

§ 51a.5 What Criteria will DHHS use to decide which projects to fund?

(a) The Secretary will determine the allocation of funds available under section 502(a) of the Act for each of the activities described in section 51a.1.

(b) Within the limit of funds determined by the Secretary to be available for each of the activities described in § 51a.1, the Secretary may award Federal funding for projects under this part to applicants which will, in his or her judgment, best promote the purpose of Title V of the Social Security Act taking the following factors equally into account:

(1) The quality of the project plan or methodology.

(2) The need for the services, research, or training.

(3) The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefitted, served or trained, taking into consideration, where relevant, whether the proposed project is urban or rural and the special circumstances associated with providing care or training in various areas.

(4) The extent to which the project will contribute to the advancement of maternal and child health and crippled children's services.

(5) The extent to which rapid and effective use of grant funds will be made by the project.

(6) The effectiveness of procedures to collect the cost of care and services from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payments for any service (including diagnostic, preventive and treatment services).

(7) The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants and other block grants made to the appropriate State(s).

(8) The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.

§ 51a.6 What confidentiality requirements must be met?

All information as to personal facts and circumstances obtained by the project's staff about recipients of services shall be held confidential, and shall not be disclosed without the individual's consent except as may be otherwise required by applicable law or as may be necessary to provide for medical audits by the Secretary with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability:
- Subpart B—Sterilization of persons in federally assisted family planning projects.
- Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.
- Subpart E—Maximum allowable cost for drugs.

42 CFR Part 122 Health systems agencies:
- Subpart E—Health systems agency reviews of certain proposed uses of Federal health funds.

45 CFR Part 19—Limitations on payment or reimbursement for drugs

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

(b) In addition to the above regulations, the following apply to projects funded through grants:

45 CFR Part 50 Policies of general applicability

Subpart D—Public Health Service grant appeals procedure.

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 75—Unformal grant appeals procedures

[FR Doc. 86-4798 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Maternal and Child Health Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are now available for grants for carrying out the following activities: Special Maternal and Child Health (MCH) projects of regional and national significance which contribute to the improvement of services for mothers, children and handicapped children; MCH research and training projects; genetic disease testing, counseling and information projects; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 502(a) of the Social Security Act which is known as the MCH Federal Set-Aside Program. HRSA, through this notice, invites potential applicants to inquire about application packages for the particular grant in which they are interested and then to make their applications for funding. It is anticipated that approximately $13.6 million will be available to support new and competing continuation projects under the MCH Federal Set-Aside Program.

DATE: Dates by which applications must be received differ for the several categories of grants and are as follows:

(1) Research: Two cycles, due dates are April 1, 1986 and August 1, 1986;

(2) Training: Long-term training, May 1, 1986;

(3) Genetic diseases testing, counseling and information: April 15, 1986;

(4) Hemophilia diagnostic and treatment centers: May 1, 1986;

(5) Special MCH improvement projects of regional and national significance, e.g., those which test or show the effectiveness of a given approach or technique in the provision of MCH care: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Potential applicants wishing to inquire about possible grant support should address their inquiries *in writing* to the Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, HRSA, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All requests for application information must be *in writing*. Requests for grant application materials should be addressed to: Grants Management Officer, Office of Program Support, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A–18, 5600 Fishers Lane, Rockville, Maryland 20857. Requests should specify the grant category or categories for which an application is requested, or present a summary of the project for which support is being requested to permit the agency to provide the applicant with the appropriate materials.

SUPPLEMENTARY INFORMATION: Under section 502(a) of the Social Security Act, between 10 and 15 percent of the funds appropriated for Title V in each fiscal year are to be retained by the Secretary for the award of grants for the purposes specified above.

Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds under the above categories (with the exception of hemophilia) as competing applications and will fund those which in the Department's view will best promote improvements in maternal and infant health care and will best deal with associated problems, including the unacceptably high rates of low birthweight, neonatal and postneonatal mortality and the barriers to initiation and continuation of breastfeeding. Funds also will be available for the development or improvement of services for the handicapped and chronically ill child and young adult. Funds will be available under the special MCH improvement projects category for a project to test and show the combined effectiveness of educational, physical health and mental health approaches to remedy the effects of birth injury or other developmental impairments through applied innovative techniques in relation to the infant, child and the families.

In terms of what types of entities may apply for the various types of set-aside grants, it should be noted that the statute at section 502(a)(2) provides that training grants may be made only to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit private institutions of higher learning or to nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs. There are no statutory or regulatory limitations on the type of entity which may apply for the other categories of grants.

One cooperative agreement may be awarded under this announcement for a project to develop and test comprehensive psychosocial, educational, and health approaches to screening, diagnostic assessment and intervention for infants, young children and their families evidencing, or at-risk for, emotional and emotionally related developmental difficulties. In carrying out these functions, the successful applicant under any such cooperative agreement would be expected to carry out activities such as the following as part of its responsibility under a cooperative agreement:

1. Development of principles and technology to identify (screen) infants, young children and their families for psychosocial and developmental difficulties;

2. Development and description of comprehensive approaches to assessment and diagnosis;

3. Development and description of comprehensive approaches to preventively oriented intervention; and

4. Participate in the development of and dissemination of technical assistance approaches.

Federal responsibilities under the cooperative agreement, in addition to the usual monitoring and technical assistance provided under grants, would include the following:

1. Making available the services of experienced Federal personnel as participants in the planning and development of all phases of this activity, including:

(a) Participation in the identification of principles and the development of approaches to identify (screen) infants, young children and their families for psychosocial and developmental difficulties,

(b) Development of critical elements and tracking of progress and study components,

(c) Establishing Federal interagency and interorganizational contacts necessary in carrying out of the program, and

(d) Participation in the preparation of articles for professional journals and descriptive materials for technical assistance programs.

2. Assuming the major role in the development and dissemination of technical assistance approaches and materials based on project outcomes.

Applicants interested in competing for this specific cooperative agreement project should so state in their written request for application to the grants management officer.

The final rule for implementing this program is published elsewhere in this issue of the **Federal Register.** This rule revises 42 CFR Part 51a (Grants for Maternal and Child Health and Crippled Childrens Services), Part 51d (Grants for Hemophilia Treatment Centers), and

Part 51f (Project Grants for Genetics Diseases Testing and Counseling Programs) by eliminating repetitive and unnecessary provisions in those regulations and by providing for a single regulation to govern the various project activities included in the set-aside program.

The MCH Federal Set-Aside Program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The MCH program is listed as No. 13.110 in the OMB Catalog of Federal Domestic Assistance.

Dated: February 19, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-4799 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-16-M

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S. 2036/Pub. L. 99-253

To make certain technical corrections to amendments made by the Food Security Act of 1985, and for other purposes. (Feb. 28, 1986; 100 Stat. 36; 2 pages) Price: $1.00